

1983 November 17

[MALACHTOS, DEMETRIADES, SAVVIDES, JJ.]

YVONI S. IOANNOU,

*Appellant-Plaintiff,*

v.

ANDREAS DEMETRIOU AND OTHERS

*Respondents-Defendants.*

(Civil Appeal No. 6057).

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1. ANDREAS DEMETRIOU	{	<i>Personally and as Administrators of the estate of the Deceased Solon Ioannou</i>
2. ODYSSEAS IOANNOU		

*Appellants-Defendants.*

v.

YVONI S. IOANNOU,

*Respondent-Plaintiff.*

(Civil Appeal No. 6058).

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*Administration of Estates—Personal representatives—Powers and duties—Power to sell immovable property for the purpose of meeting the obligations of the estate—Whether leave of the Court required—Section 32(1) of the Administration of Estates Law, Cap. 189.*

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*Administration of Estates—Personal representatives—Are considered as trustees—Entitled to relief when there is no wilful negligence or misconduct on their part—Section 58 of the Trustee Law, Cap. 193.*

*Costs—Administration Action—Administrators ordered to pay costs personally.*

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Solon Ioannou (“the deceased”) died in February, 1974 intestate leaving as his lawful heirs his wife, two sisters and his brother

Odysseas Ioannou. With the consent of the heirs respondent 1 in appeal 6057 and his said brother Odysseas Ioannou, respondent 2, were appointed as administrators of his estate. The property left by the deceased consisted of movables and immovables. His immovable property consisted of a three-storey building at Strovolos. In 1976 the just debts of the deceased and the taxes and duties payable amounted to more than £10,000 and so the administrators had to sell immovable property to pay them. In February, 1976, the administrators applied to the Court for an order for the partition of the building into three self contained tenements in order to sell the one storey for the payment of the above debts of the deceased. In March, 1976 the Court authorised the partition applied for and the administrators were further authorised to negotiate the sale of anyone of the three storeys but imposed a restriction that no sale agreement be entered into before the approval of the Court. Tenders were invited for the sale of one storey and as there was no response the administrators sold the said immovable to respondents 3 and 4 at the agreed sale price of £33,800. The trial Court dismissed the action of the widow of the deceased against the administrators and respondents 3 and 4 whereby she claimed, inter alia, the cancellation of the transfer of the above immovable by the administrators in the name of respondents 3 and 4 but proceeded further and found that defendants 1 and 2 committed a breach of trust. In exercise of its powers under section 58\* of the Trustee Law, Cap. 193 the trial Court granted relief to the administrators since there was no wilful neglect or misconduct on their part.

On the question of costs the trial Court made no order as between party and party but ordered that the costs of the administrators be borne by them personally and not to burden the estate.

Hence appeal No. 6057 by the widow of the deceased; and appeal No. 6058 by the administrators against the order of the trial Court as regards the finding that they had committed a breach of trust and as regards the order for costs.

The trial Court found that the widow knew and either expressly or impliedly consented to the sale of the property as a whole

\* Section 58 is quoted at pp. 901-902 post.

since there was no response to the invitation for tenders for the sale of one storey only. It, also, found that the administrators were bound to sell the immovable property as a whole. It further found that the value of the property at the time was in the region of £35,000.- and that the sale price was a reasonable one and there was no evidence whatsoever of any fraud. Consequently, there could be no collusion between respondents 3 and 4 and the administrators. 5

On the question as to whether the administrators acted in disobedience to the order of the Court "that no agreement of sale be entered into before the approval of the Court" the trial Court held: "The sale of sufficient immovable property to meet the testamentary expenses and the just debts of the deceased did not require any authority by the Court. The rights of the administrators are plainly set out in the law. We considered, therefore, that their application to the Court is only an additional safeguard for them. They applied in effect for directions and no more". 10 15

*Held.* after upholding the above finding of the trial Court regarding the value of the property, and the absence of fraud and collusion, that the administrators in the present case, taking into consideration the debts of the deceased and the value of his property could sell one storey of the said immovable for the purpose of meeting the obligations of the estate without obtaining the leave of the Court and, consequently, without the approval by the Court of its sale price; (see section 32(1) of the Administration of Estates Law, Cap. 189); accordingly the judgment of the trial Court, including the part granting relief to the administrators will be sustained and appeal 6057 must fail. 20 25 30

(2) That in all the circumstances of this case the approach of the Court regarding the order for costs by the administrators personally was the proper one; accordingly appeal No. 6058 must, also, fail.

*Appeals dismissed.* 35

#### Appeals.

Appeals by plaintiff and defendants against the judgment of the District Court of Nicosia (Stylianides, P.D.C. and

Laoutas, D.J.) dated the 19th December, 1979 (Action No. 5141/77) whereby plaintiff's claim for an order cancelling the transfer of a three-storey building situated in Nicosia in the name of defendants 3 and 4 was dismissed and defendants 1 and 2 were held to have committed a breach of trust.

C. *HadjiNicolaou*, for appellant in Appeal No. 6057 and respondent in Appeal No. 6058.

L. *Papaphilippou* with *D. Zavallis*, for respondents 1 and 2 in Appeal No. 6057 and for appellants in Appeal No. 6058.

A. *Magos* with *D. Zavallis*, for respondents in Appeal No. 6057.

*Cur. adv. vult.*

MALACHTOS J. read the following judgment of the Court. The appellant in appeal No. 6057 brought Action No. 5141/77 in the District Court of Nicosia against the four respondents, respondents 1 and 2 being the Administrators of the estate of her late husband Solon Ioannou, claiming the following remedies:

1. An Order of the Court ordering the cancellation of transfer of a three-storey building situated at No. 1 Papanicolis Street in Nicosia under Registration No. K 737 being plot 823, by defendants 1 and 2 in the name of defendants 3 and 4;

2. A declaration of the Court that the registration by the District Lands Office in the name of defendants 3 and 4 of the said immovable is null and void ab initio;

3. An order of the Court ordering the cancellation of the Letters of Administration granted to defendants 1 and 2 of the estate of the deceased Solon Ioannou in Probate Application No. 133/74 of the District Court of Nicosia, and granting Letters of Administration to the plaintiff,

Alternatively,

4. Special and general damages over £20,000.- by way of compensation and/or damage caused to the plaintiff for the unlawful sale of her hereditary share by defendants 1 and 2 to defendants 3 and 4;

5. That all the defendants give an account on oath before the Court of all their acts in connection with the unlawful sale of the said property,

6. That all the defendants should show cause why not to be punished for disobedience to the Order of the Court dated 5 30.3.1976 in Probate Application No. 133/74; and

7. Legal interest and the costs of the action.

The Full District Court of Nicosia, after full hearing, dismissed the plaintiff's action against all the defendants but proceeded further and found that defendants 1 and 2 committed 10 a breach of trust. However, in exercise of their powers under section 58 of the Trustee Law, Cap. 193, granted them relief

On the question of costs the trial Court made no order as between party and party but ordered that the costs of defendants 1 and 2 be borne by them personally and not to burden the 15 estate.

The plaintiff being dissatisfied with the judgment of the Court as regards her claim, filed the present appeal

Defendants 1 and 2 on the other hand, filed appeal No. 6058 against the order of the trial Court as regards the finding 20 that they had committed a breach of trust and as regards the order for costs.

The facts of the case, as found by the trial Court, are these.

Solon Ioannou, late of Nicosia, died intestate on the 27th February, 1974, leaving as his lawful heirs his wife, the appellant, 25 Yvoni S Ioannou, his sisters Athina Artemiou and Elenitsa Ioannou and his brother Odysseas Ioannou. With the consent of the heirs, Andreas Demetriou, respondent 1 in this appeal, a registered advocate's clerk, and Odysseas Ioannou, the brother of the deceased, respondent 2, were appointed Administrators 30 of his estate, in Probate Application No. 133/74. The property left by the deceased consisted of movables and immovables. The immovable property of the deceased consisted of a three-storey building at Papanicolaou Street No. 1, Strovolos, Nicosia, under Registration No. K737 dated 29th September, 1967 35 being Plot No. 734 of S/P XXI/63.W.II.

By a contract of sale the Administrators in September, 1977

transferred by declaration No. P6974/77 the said immovable to respondents 3 and 4 at the agreed sale price of £33,800.—

5 The appellant, who is entitled to one half share of the net estate, as there is no offspring of her marriage with the deceased, instituted, as we have already said, Action No. 5141/77 claiming against the respondents the above mentioned remedies.

10 Respondents 1 and 2 contended that as Administrators had a power to sell the property and that the price was the highest that could be secured at the time of the sale and, furthermore, that this was with the knowledge and consent of the appellant.

15 Respondents 3 and 4 are husband and wife and in their defence alleged that they bought the said property bona fide for value with the full knowledge and consent of the appellant and that the purchase price was the reasonable market value of the property at the time.

20 The deceased was indebted to the appellant, her mother and daughter from another marriage, his brother Odysseas and his sister Elenitsa. He owed over £1,000.— income tax and the Estate Duty was agreed at £2,238.— plus 4% interest from 27th March, 1975. His movable property consisted of shares of Laikon Kafekoption and some cash which were received by his creditors. The above shares could not be sold except to coffee-shop keepers or persons who run similar business and this restriction hindered the Administrators from selling them. In 25 1976 the just debts of the deceased and the taxes and duties payable amounted to more than £10,000.— and so the Administrators had to sell immovable property to pay them.

30 Originally the Administrators and the beneficiaries agreed to sell one storey of the immovable in order to pay the above debts of the deceased.

On the 5th February, 1976, the Administrators applied to the Court for an Order for the partition of the building into three self contained tenements, in order to sell the one storey for the payment of the above debts of the deceased.

35 On the 20th March, 1976 the Court authorised the partition and the Administrators were further authorised to negotiate the sale of any one of the three storeys but imposed a restriction

that no sale or agreement of sale be entered into before the approval of the Court.

The ground floor and the first floor of the said building were ordinary flats and were built by virtue of a building permit. However, the second floor was an unauthorised building as no permit was obtained for its erection and its walls were made of wood work and glass and its internal partition was not of a habitable flat but it could be used either as a club or a big office. The Administrators were ignorant of the fact that the second floor was built without a building permit.

Tenders were invited for the sale of one storey in three local newspapers on the 6th and 7th June, 1976, but since there was no response, the Administrators reoriented themselves to the sale of the whole immovable and endeavours were exerted in that direction.

On 18th April, 1977, the Administrators offered the building for sale to the Egyptian Embassy for £35,000.- but they received no reply.

On the 20th and 22nd April, 1977, tenders were invited through the press, for the sale of the whole immovable and there were private offers for £25,000.- and £30,000.-. Afterwards it was decided to sell the whole building by public auction.

The auction was advertised in the local press on the 24th and 27th July, 1977 and took place on the 31st July, 1977 but there were no bidders. In the meantime, on the 28th July, 1977, Mr. Ionides, who was acting on instructions from a client of his who was living in England, sent a written offer to the Administrators offering £32,500.- for the property.

It must be noted here that Mr. Ionides, who is a retired Commissioner of Income Tax, and is a Tax and Finance Consultant in private practice, and who handled the estate duty and income tax affairs of the estate, was also the man to whom the appellant resorted for every problem she had within his line of business.

By letter dated 13th August, 1977, the Administrators notified Mr. Ionides that they would accept the offer but they were informed that the client of Mr. Ionides was not any more interested to purchase the property. The property was then sold to respondents 3 and 4 for the sum of £33,800.-.

It was the contention of the plaintiff in the Court below that she did not know that the Administrators would sell the whole property and that the property was sold at an undervalue. She also alleged that there was a collusion between the Administrators and defendants 3 and 4 for the sale of the whole property at such a low price since its value at the time was between £50,000.- and £60,000.-.

The trial Court, after hearing the evidence adduced by both sides, found that the plaintiff knew and either expressly or impliedly consented to the sale of the property as a whole since there was no response to the invitation for tenders for the sale of one storey only.

The trial Court also found that the value of the property at the time was in the region of £35,000.- and that the sale price was a reasonable one and that there was no evidence whatsoever of any fraud. Consequently, there could be no collusion between defendants 3 and 4 and the Administrators.

We must say straight away that we fully agree with the above findings of the trial Court. Having gone through the record of proceedings we are not only fully satisfied that on the evidence adduced it was entirely open to the trial Court to reach the conclusions it did, but we must also say that had we tried the case ourselves, we would have reached the same conclusions.

The main complaint of counsel for applicant on the legal aspect of the case, both here and in the Court below, was that the Administrators sold the property by private sale without obtaining the leave of the Court in disobedience to the Order of the Court dated March 30th 1976, in Probate Application No. 133/74, in which the Court authorised the partition of the property into three storeys with the restriction not to sell any one of them to raise money for payment of the debts of the deceased before obtaining the approval of the Court.

Counsel for the appellant-plaintiff in the action, submitted that the Administrators in so doing acted in excess of their powers and contrary to law and so the sale and transfer of the immovable property in question was void and should be set aside.

On the question as to whether the Administrators acted in

disobedience to the Order of the Court, the relevant part of the judgment of the trial Court appears at page 114 of the record and reads as follows:

“In the present case the estate was indebted in considerable amounts; furthermore, £2,238.600 mils plus interest thereon as from 27.3.1975 estate duty was due. (See affidavit dated 5.2.1976 sworn by the administrators). The administrators in order to pay the just debts of the deceased and certainly the administration fees, they had to sell immovable property. They applied to the Court on 5.2.1976 for authority to partition the immovable property in three self-contained tenements and to sell any of the three in order to raise money for the payment of the debts and ‘to facilitate the distribution of the rest of the estate between the heirs’. The Court authorised the partition of the property and the administrators were authorised to negotiate the sale of anyone of the three storeys but a restriction was imposed not to enter into agreement of sale before approval by the Court.

Having considered the matter, we are of the view that the sale of sufficient immovable property to meet the testamentary expenses and the just debts of the deceased did not require any authority by the Court. The rights of the administrators are plainly set out in the law. We consider, therefore, that their application to the Court is only an additional safeguard for them. They applied in effect for directions and no more”.

The powers and duties of personal representatives, including the power of sale of immovable property of the deceased, are governed by sections 31 and 32 of the Administration of Estates Law, Cap. 189, which read as follows:

“31.(1) An executor shall have the powers and duties given and imposed upon him by the common law and the doctrines of equity save in so far as other provision has been made or shall be made by any law of the Colony.

(2) Every person to whom the administration of the estate of a deceased person is granted shall, subject to the limitations contained in the grant, have the same rights and

liabilities and be accountable in like manner as if he were the executor of the deceased.

5 32.(1) For the purpose of paying the funeral and testamentary expenses and all just debts of the deceased person, the personal representative shall have power to sell such part of the immovable property of the deceased as may be necessary and may raise money thereon by way of mortgage or charge.

10 (2) The powers conferred by this section shall not be deemed to limit any powers conferred upon an executor by the will of the deceased”.

15 It is clear from the wording of section 32(1) that the Administrators in the present case, taking into consideration the debts of the deceased and the value of his property could sell one storey of the said immovable for the purpose of meeting the obligations of the estate without obtaining the leave of the Court and, consequently, without the approval by the Court of its sale price.

20 Although the trial Court found that the Administrators were bound to sell the immovable property of the deceased as a whole, after their unsuccessful attempt to sell only one storey thereof, and that the sale price was a reasonable one and there was no collusion between the purchasers and the Administrators, nevertheless, on the principle that in law the Administrators are considered as trustees, found that they committed a breach of trust in view of the fact that they sold much more immovable property than it was necessary to cover the obligations of the estate, without obtaining an order of the Court to do so.

30 The trial Court then proceeded further and ruled that since there was no wilfull neglect or misconduct on the part of the Administrators they were entitled to relief under section 58 of the Trustee Law, Cap. 193, and in exercising their discretion granted this relief. This section is as follows:

35 “58. If it appears to the Court that a trustee, whether appointed by the Court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after

the commencement of this Law, but has acted honestly and reasonably and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he committed such breach, then the Court may relieve him either wholly or partly from personal liability for the same". 5

In dismissing the plaintiff's claim the trial Court ordered that each party should bear his own costs and that the costs of the Administrators should be borne by them in their personal capacity and not to be paid out of the estate. 10

As we stated earlier on, in our judgment, this last part of the judgment of the trial Court, has been the subject matter of Appeal No. 6058 by the Administrators. On this last issue we must say that in all the circumstances of the present case, the approach of the trial Court was the proper one. 15

For the reasons stated above, both appeals are dismissed.

On the question of costs, there will be an Order that the appellant in Civil Appeal No. 6057 should pay the costs of respondents 3 and 4.

All the other parties in both appeals should bear their own costs. 20

No costs should burden the estate.

*Appeals dismissed. Order for costs as above.*