

1986 January 25

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

TOURIST ENTERPRISES AXIOTHEA LTD.,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF INTERIOR,

Respondent.

(Case No. 276/84).

The Department of Lands and Surveys (Fees and Charges) Law, Cap. 219 as amended by Law 31/76, sub-sections 9(2) and 9(3)—Transfer of immovable property by way of gift to a limited company registered under the Companies Law, Cap. 113—Prerequisites for the refund of the transfer fees—"Close Relations" in sub-section 9(3)—The expression does not include relations by marriage (other than a spouse).

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Words and Phrases: "Close Relations" in sub-section 9(3) of the Department of Lands and Surveys (Fees and Charges) Law, Cap. 219 as amended by Law 31/76.

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The applicant is a limited company registered under the Companies Law, Cap. 113. On the 4.1.79 five pieces of immovable property were transferred by way of gift to the applicant company by the co-owners of such property, namely 1. Athina Savva Michael and 2. Michael Georghiou Paraskeva, spouses 3. Antonis Michael Georghiou 4. Andreas Michael Georghiou and 5. Maroulla Georghiou Michael, children of the first two and 6. Antonis Polyviou Antoniou, the husband of Maroulla Georghiou Michael.

On the date of the said transfer the shareholders of the applicant company were 1. Michael Georghiou Paraskeva.

2. Athina Savva Michael and 3. Andreas Michael Georghiou.

During the five year period from the date of the said transfer Antonis Michael Georghiou, Maroulla Michael Georghiou and Antonis Polyviou Antoniou acquired shares in the applicant company. 5

On 4.2.84 the applicant company invoking the provisions of s. 9(2) of Cap. 219 as amended by Law 31/76 applied for the refund of the whole amount (C£2,100) paid by way of transfer fees for the said transfer of the 4.1.79. The respondent refused to refund the whole amount, but accepted to refund an amount of £336.35 in respect of the 1/6th share of Maroulla Michael Georghiou in the properties transferred to the applicant as aforesaid. 10

As a result of such decision the present recourse was filed. Counsel for the applicant company submitted that the words "close relatives" in s. 9(3)* of the said Law Cap. 219 as added by Law 31/76) refer not only to blood relations but also to relations by marriage and, that, therefore, the respondent wrongly considered that Antonis Polyviou Antoniou was not a "close relation" to his parents-in-law and his brothers-in-law. 15 20

Held, dismissing the recourse: (1) The expression "close relations up to and including kindred of the third degree" in s. 9(3) of Cap. 219 as amended by Law 31/76 is not defined in the said Law. However, if it is to be given its ordinary and natural meaning such meaning can be found in the Wills and Succession Law, Cap. 195 (s. 48 and the Second Schedule) being the only Law defining the degrees of relationship. Moreover, section 9(3) particularly specifies that spouses are to be included in the notion "close relations", since they are not ordinarily so. Therefore, if there was a need to make an express provision as to spouses, there was an even greater need to mention other less closely connected relations by marriage, if the legislature intended them to be included in the notion "close relations". In the absence of such specific provision 25 30 35

* Sub-sections 2 and 3 of section 9 of Cap. 219 as amended by Law 31/76 are quoted at pp. 235-237 post

the definition of "close relations" must be taken to be as in Cap. 195.

(2) It follows that since during the five year period provided in s. 9(2) a person, who is not a close relative of the applicant's other shareholders, acquired shares in the company, the necessary prerequisites of the section are not satisfied.

Recourse dismissed.

No order as to costs.

10 **Recourse.**

Recourse against the refusal of the respondent to refund to applicant company the transfer fees collected for the transfer, by way of gift, of immovable property by the co-owners of the property to the applicant company.

15 *Chr. Georghiades*, for the applicant.

Chr. Theodoulou (Mrs.), Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicant Company seeks a declaration of the Court that the decision of the District Lands Officer of Paphos by which he refused to refund the transfer fees which were collected on the day of the transfer of properties Registration Nos. 40780, 40781, 40782, 40784 and 39719 at Peyia, Paphos, as per Declaration of Gift No. D. 40/79, is null and void and of no legal effect whatsoever.

The applicant is a limited company registered under the Companies Law, Cap. 113. On the 4th January, 1979, by a declaration of transfer by way of gift made at the District Lands Office, Paphos, five pieces of immovable property were transferred by the co-owners of the property, namely. 1. Athina Savva Michael and 2. Michael Georghiou Paraskeva, spouses, 3. Antonis Michael Georghiou, 4. Andreas Michael Georghiou and 5. Maroulla Georghiou Michael, children of the first two and 6. Antonis Polyviou Antoniou, the husband of the aforesaid Maroulla Georghiou Michael.

all of Paphos, to the applicant Company. The amount of £2,100.- was paid as transfer fees.

On the 4th February 1984, the applicant Company invoking the provisions of section 9(2) of the Department of Lands and Surveys (Fees and Charges) Law, Cap. 219, as amended by Law No. 31 of 1976, applied to the District Lands Officer of Paphos to be refunded the aforesaid fees. By letters dated the 22nd March, 1984 and 13th April, 1984, the respondent refused to refund the whole amount paid but informed the applicant Company that only an amount of £336.35 in respect of the 1/6th share of Maroulla Georghiou Michael would be refunded because, as stated in the aforesaid letter of the 13th April 1984:

“... Antonis Polyviou Antoniou who acquired shares during the five years from the date of the transfer (3.1.1979 - 3.1.1984) is the husband of the transferor Maroulla Michael Georghiou and thus it is not covered by the prerequisites to subsection 2 of section 9 of Cap. 219 and Law No. 31 of 1976.

As regards the share of the other transferors, the fees are not refunded because they are not covered by the prerequisites to subsection 2 of section 9 of Cap. 219 and Law No. 31 of 1976 and in particular

a) share of Athina Savva Michael and Michael Georghiou Paraskeva; within the five years from the date of the transfer (3.1.1979 - 3.1.1984), their son-in-law Antonis Polyviou by their daughter acquired shares, who is not considered their relation.

b) share of Andreas and Antonis Michael Georghiou; within the five years from the date of the transfer (3.1.1979 - 3.1.1984) Antonis Polyviou their brother-in-law by their sister acquired shares, who is not considered their relation.

c) share of Antonis Polyviou Antoniou; on the date of the transfer the only shareholders of the company were his in laws Michael Georghiou Paraskeva and Athina, Savva Michael and his brother-in-law An-

dreas Michael Georghiou who are not considered his relations.”

As against this decision, the present recourse was filed.

5 Relevant also are the following facts. On the date of transfer the shareholders of the transferee, the applicant Company were:

1. Michael Georghiou Paraskéva
2. Athina Michael Georghiou
3. Andreas Michael Georghiou.

10 Athina Michael Georghiou (or Athina Savva Michael) is the wife of Michael Georghiou Paraskeva and Andreas Michael Georghiou is their son.

15 During the five years from the date of the transfer (3.1.1979 - 3.1.1984) the following persons also acquired shares in the applicant Company:

1. Antonis Michael Georghiou
2. Maroulla Michael Georghiou
3. Antonis Polyviou.

20 Antonis Michael Georghiou and Maroulla Michael Georghiou (or Maroulla Georghiou Michael) being children of the aforesaid Michael Georghiou Paraskeva and his wife and Antonis Polyviou (Antoniou) being the husband of Maroulla Georghiou Michael—Attachment “C” to the opposition is a statement verifying the above relationships.

25 Section 9(2) of Cap. 219 as added by Law No. 31 of 1976 reads as follows:

30 «Οσάκις ακίνητος ιδιοκτησία μεταβιβάζεται εις εταιρείαν της οποίας μόνοι μέτοχοι είναι οιοιδήποτε των ακολούθων, ήτοι του μεταβιβάσαντος δικαιιοπαρόχου και στενών συγγενών αυτού, και καθ' οιονδήποτε χρόνον προσάγεται εις τον Διευθυντήν ικανοποιητική, κατά την κρίσιν αυτού, απόδειξις του γεγονότος ότι, κατά την διάρκειαν πενταετίας από της ημερομηνίας της

δηλώσεως μεταβιβάσεως, ή, εάν τοιαύτη είναι η περίπτωση, μέχρι της εντός της προαναφερθείσης περιόδου τυχόν διαλύσεως ή εκκαθαρίσεως της εταιρείας, ουδέν πρόσωπον άλλο του μεταβιβάσαντος δικαιοδόχου και των αυτών ή ετέρων στενών συγγενών αυτού απέκτησεν οιαδήποτε μετοχήν της εταιρείας άλλως η αιτία θανάτου, ο Διευθυντής επιστρέφει εις την εταιρείαν το ποσόν των κατά τον χρόνον της δηλώσεως μεταβιβάσεως επιβληθέντων και εισπραχθέντων τελών και δικαιωμάτων, μειωμένον κατά ποσόν ίσον προς 4 επί τοις εκατόν της κατά την ημερομηνίαν της προαναφερθείσης δηλώσεως μεταβιβάσεως εκτετιμημένης αξίας της μεταβιβασθείσης ακινήτου ιδιοκτησίας».

In English it reads:

"Whenever immovable property is transferred to a company of which the only shareholders are any of the following, that is the transferor and his close relatives and at any time is produced to the Director, satisfactory, in his opinion, proof of the fact that, during the five-year period from the date of the declaration of transfer or, if such is the case, until the within the aforesaid period dissolution or liquidation of the company, no person other than the transferee (μεταβιβάσαντος δικαιοδόχου) and the same or other close relations of his acquired any share in the company other than by reason of death, the Director refunds to the company the amount of at the time of the declaration of transfer imposed and collected fees and charges, reduced by an amount equal to 4% on the assessed value of the transferred immovable property as on the date of the aforesaid declaration of transfer".

Section 9(3) of Cap. 219 as added by Law No. 31 of 1976 provides as follows:

(3) Δια τους σκοπούς των εδαφίων (1) και (2) στενός συγγενής εν σχέσει προς πρόσωπον τι σημαίνει τον ή την σύζυγον αυτού και συγγενείς αυτού μέχρι και του τρίτου βαθμού συγγενείας».

And in English:

“For the purposes of subsections (1) and (2) close relations in connection with any person means his or her spouse and his relatives up to and including kindred of the third degree.”

It has been argued on behalf of the applicant Company that it was entitled to the refund of the transfer fees because the persons who acquired shares in the company, other than its original shareholders during the five years following the date of the declaration of transfer, come within the notion of close relatives to be found in subsection (3) of section 9, in that the words “close relatives” do not only refer to blood relations but also to relations by marriage. Thus it was argued, the said Antonis Polyviou Antoniou comes within the above notion of close relatives by virtue of his marriage to Maroulla Georgiou Michael.

On the other hand counsel for the respondent has argued that the said Antonis Polyviou Antoniou being the husband of one of the shareholders does not come within the notion of close relatives because such does not include relatives by reason of marriage. The expression “close relatives up to and including kindred of the 3rd degree” contained in section 9(3) is not defined in Cap. 219 or Law No. 31 of 1976. If, however, it is to be given its ordinary and natural meaning, this can be found in the Wills and Succession Law Cap. 195, section 48 and the Second Schedule, being the only law defining the degrees of relationship.

I agree with the contention of counsel for the respondent. If the intention of the legislator was that a different meaning should be given, then it would have been provided so expressly. Moreover it particularly specifies that spouses are to be included in the notion of close relatives, since they are not ordinarily so. Therefore since it was required to make a particular provision in respect of spouses, there is an even greater reason to have made such a provision also in respect of other relations by marriage who are less closely connected. Consequently since the law itself does not include such provision which would have shown an intention to the contrary, then the definition must be taken to be as that in Cap. 195.

In other words since the prerequisite of the section is not satisfied, that is a person acquired shares in the applicant Company during the period of five years from the date of transfer, who is not a close relative of its shareholders, otherwise than by devolution on death, the applicant Company is not entitled to a refund of the fees and charges paid at the time of the transfer less 4% of the assessed value of the transferred property as on the date of the transfer. 5

For the above reasons this recourse must fail and is hereby dismissed, with no order as to costs. 10

Recourse dismissed.
No order as to costs.