

# An oasis in the search for title deeds

By Tasos A Coucounis

THE PROTECTION of the rights of buyers of immovable property in Cyprus constitutes a chaotic and worrying reality. Thousands of bona fide and well-intentioned investors, local and foreign, have been investing their money for many years in the property industry of the island, buying houses, villas and apartments. One of the basic promises is that of the issue of title deeds for their investment sometime in the near future. A promise that will lead them, so long as it is kept, to the transfer of those title deeds in their name and to the full exploitation of their investment.

This promise is difficult to keep sometimes, resulting in a search by buyers of ways to claim their rights against the denial, the negligence and the indifference of many vendors and of ways to overcome the insecurity of their investment. The Cyprus state has been trying over the last years to contribute to this effort through, among other measures, legislating for a procedure to obtain a "special certificate of approval", without providing buyers with a substantial way out of their dead end. In the past, a law was passed, Law 96 (I)/1997, which has been recently dwelled upon by the Courts of Cyprus.

Many articles have been written on Law 96(É)/1997. It suffices to say that it is a law amending Cap.232, i.e. the Sale of Land (Specific Performance) Law, which gives the possibility to a buyer to issue judicial proceedings against the vendor. The object of this lawsuit is for the Court to appoint by Court Order a suitable person who is to "replace" the vendor and take all necessary measures to have separate title deeds issued for his/her property. This will later enable him to use the right of specific performance and have this separate title deed of his/her property transferred in his/her name.

Since the law's inception in 1997 there has been little jurisprudence to enable people to use its provisions to their benefit. Despite this absence of judicial pronouncements, the decision of the Larnaca District Court in Action 47/2002, Tryfonas Cosma v Charalambos Xydias, Pericles Xydias and Sokoriky Developments Ltd, constitutes an important chapter in the history of this law, an "oasis" in the search by thousands of buyers for their title deeds. The decision's importance lies in the following:

Firstly, it settles that Law 96(É)/1997 is a procedural law which in no way affects the vested interests and rights of the parties. What this means, among other things, is that no lawsuit filed on the basis of Law 96 (I)/1997 by one of two buyers of property will be rejected for the reason that not all interested parties are included in the procedure before the court. In this case, the one of the two buyers on the sale contract sued the registered owners and vendor-company of his flat, asking the court to appoint a suitable person to carry out the necessary acts for issuing separate title deeds for his property. The defendants said this was not possible as the other buyer was not a party to the action. This argument was swiftly rejected by the court. Furthermore, due to the fact that this law is procedural the court is obliged to take into account all the aspects of the case in hand up until the date of issuing its court order.

Secondly, it becomes well-settled practice when drafting a sale contract for the purchase of immovable property to include both the vendor-company and the registered owners of the land on which the block of flats or the complex of houses is going to be built. In many cases, the registered owner of a plot of land is a different person from the vendor-developer who sells property built on it. This registered owner may have a share in the registered ownership of the land and the vendor may have the rest. It is imperative that both are included in the contract to come within the provisions of Law 96(I)/1997.

Thirdly, and perhaps most importantly, the court, in using the powers it is given by the provisions of Law 96 (É)/1997, has the discretion to determine who is to be appointed by it to go ahead with the procedure of issuing separate title deeds. The court has the power to appoint the plaintiff-buyer so long as it is satisfied that he/she knows the procedure required to obtain the necessary licences, permits and certificates of approval, and that he/she has the requisite time to obtain these licences and certificates of approval for the issue of separate title deeds. However, the court has the power to order the vendor himself to carry out this procedure and issue separate title deeds within a specific time period. In the case before it, the court ordered the director of the vendor-defendant company to take all necessary steps and do whatever is required to obtain the relevant licences and certificates of approval and issue separate title deeds within six months from the date of service of the Court Order against the said director.

Therefore, whereas in the past the vendor neglected, was indifferent, even denied to move this process forward, he/she is now ordered by the court to do this in a specific strict time frame under the "threat" of being punished, even imprisoned, if he disobeys the Court Order. No longer are there any excuses for the vendor to put forward. From the moment the Court Order is issued and served, he/she is obliged to conform to this or face the consequences of the law. Not even the existence of mortgages on the plot of land can be used as an excuse for not complying with the order and not issuing separate title deeds. The presence of a mortgage on

the plot of land cannot constitute an excuse later on for the enforcement of a buyer's rights to specific performance of his/her sale contract.

This decision can, with the right handling and the correct presentation of facts before the court, help many buyers who are held "hostage" by the denial of the vendor to issue separate title deeds. It constitutes a step in the right direction of protecting the rights of ownership of so many of our fellow citizens and fellow EU citizens, and an indication that Cyprus courts can offer solutions to long-term problems of Cyprus society.

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