

[WILSON, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

1. GEORGHIOS CHAR. TAMBOURLA,
2. MAROULLA LIASSOU KARASAVVA,

Appellants (Defendants).

v.

NINA SIMAN,

Respondent (Plaintiff).

(Civil Appeal No.4381).

1962
Nov. 20

1. GEORGHIOS
CHAR.
TAMBOURLA
2. MAROULLA
LIASSOU
KARASAVVA
v.
NINA SIMAN

Landlord and Tenant—Business premises—Rent Control—‘Controlled areas’—The Rent Control (Business Premises) Law, 1961 (Law No. 17/61), section 3—The amending Law No. 39 of 1961—‘Pending actions’—Meaning—Section 20 of Law 17/61 (supra)—No order for possession of business premises in ‘controlled areas’ can be made otherwise than subject to the qualifications of the statute—Notwithstanding that an order for possession could have been made independently thereof at some earlier stage in the action even after the enactment of Law No. 17/61 (supra)—Sections 10 and 20 of that Law.

The Rent Control (Business Premises) Law, 1961, (Law No. 17/61) was published in the Official Gazette and came into force on the 28th April, 1961. The landlord’s action for possession was filed on the 26th May, 1961; and it was based on the ground that the tenancy under which the appellants- defendants occupied the premises in question, was terminated on the 10th May, 1961.

Section 3 of the Law, in its original form, made the provisions of the statute applicable to business premises found within such ‘controlled areas’ as might be specified in Orders or Public Instruments made and published by the Council of Ministers from time to time, in the public interest.

And section 21 provided that until the publication of Ministerial Orders specifying the ‘controlled areas’ under section 3, but in no case for a period exceeding one month from the publication of the Law (28/4/61), no Court would have the power to make an ejectment order affecting business premises in the town areas specified in the section.

No Ministerial Orders having been made or published under section 3, until the 17th of October, 1961, the Legislature

1962
Nov 20
—
1 GEORGIOS
CHAR
TAMBOURIA
2 MAROULLA
LIANOU
KARASAVVA
1
NINA SIMAN

took the matter back in their hands by enacting and publishing an amending statute, Law No 39 of 1961, dated the 17th October, 1961, whereby section 3 of the original Law was substituted by a section specifying the protected or 'controlled areas' and section 21 was abolished altogether

On the other hand, section 10 of Law 17/61 (*supra*) provides that no ejectment order can be made in respect of business premises in 'controlled areas' otherwise than subject to the qualifications and requirements of the statute. And by section 20, the said statute governs the position not only in actions filed after its enactment but also in 'pending actions' at that time.

The landlord, *i.e.*, the respondent-plaintiff, filed an action for possession of his shop situated in Famagusta on the 26th May 1961, based on the ground that the tenancy under which the appellant-defendant occupied the premises was terminated on the 10th May, 1961. There was no question that the premises are business premises within a 'controlled area', as defined, specified and created on the 17th October 1961 by Law No. 39/61 (*supra*).

In these circumstances, the District Court took the view that: "as there was no law in force on the 10th May, 1961 when the lease was already duly terminated, the defendants cannot be considered as being statutory tenants as from the 10th May. The amendment of Law 17/61 cannot be given a retrospective effect and the declaration of Famagusta Municipal limits as a 'controlled area', came into force on the 17th October, 1961, when Law 39/61 was published in the Official Gazette". Upon this view of the law, the District Court held that the premises were beyond the protection of the enactments in question, and made on the 3rd May, 1962, the ejectment order attacked by this appeal. It was contended on behalf of the appellant-defendant, that since the action is 'pending action' within section 20 of the Rent Control (Business Premises) Law (*supra*) no such order for ejectment could be made by the District Court. The High Court, allowing the appeal.

Held: (1) There can be no doubt that this order could not be made during the one month's period from the 28th April 1961, as the premises came clearly within section 21 of the original statute, published on that date. And it would

1962

Nov. 20

1. GEORGHIOS
CHAR.
TAMBOURLA
2. MAROULLA
I IASSOU
KANARAVVA
v.
NINA SIMAN

seem equally clear that there was nothing to prevent the making of the ejectment order after expiry of that period, and until the publication of the amending law (No. 39 of 1961) on the 17th October 1961. But as from that date, the Law enacted and published in April, stood as amended; and section 3 of the amended statute clearly covers the premises in question.

(2) When making the ejectment order on the 3rd May, 1962, the Court had to apply the statute as it stood at that time, including section 10 thereof which governs the position, not only in actions filed after the publication of the Law on the 28th April, 1961, but also in actions 'pending' at that time, as expressly provided in section 20. (*Georgallides v. Constantinides*, reported in this Volume p. 99, ante, considered).

(3) As to costs, we take the view that as the respondent was within her rights in filing and prosecuting the action until the 17th October, 1961, she is entitled to her costs in the District Court up to that date inclusive. Applying section 20 to the costs incurred thereafter, including costs in the appeal, we direct that in the circumstances of this case each party should bear its own costs.

Appeal allowed.

Cases referred to :

Georgallides v. Constantinides, reported in this Volume, p. 99, ante.

Appeal.

Appeal against the judgment of the District Court of Famagusta (Attalides, P.D.C.) dated the 3rd May, 1962 (Action No. 1041/61) whereby the defendant was ordered to evacuate and deliver up free possession to plaintiff of the premises known as "Akteon" situated at Varosha and to pay to the plaintiff the sum of £42.— per month as mesne profits as from 10.5.61 till evacuation and delivery of possession plus the costs of the action.

L.N. Clerides with *A.N. Antoniadis* for the appellant.

A. Ch. Pouyouros with *Y. Boyiadjis* for the respondent.

The judgment of the Court was delivered by :—

1962
Nov. 20

1. GEORGHIOS
CHAR.
LAMBOURIA
2. MAROULLA
LIASSOU
KARASAVVA
V.
NINA SIMAN

VASSILIADIS, J. : Learned counsel on both sides agree that the fate of this appeal turns on whether the provisions of the Rent Control (Business Premises) Law, No. 17 of 1961, apply to this case or not. Mr. Pouyouros for the respondent-landlord conceded that if his client's action is a "pending action" within section 20 of the Law, the appeal must succeed; and both the judgment of the District Court and the ejectment order therein, must be set aside.

The Rent Control (Business Premises) Law, 1961, (Law No. 17/61) was published in the Official Gazette and came into force on the 28th April, 1961. The landlord's action for possession was filed on the 26th May, 1961; and it was based on the ground that the tenancy under which the appellants-defendants occupied the premises in question, was terminated on the 10th May, 1961.

Section 3 of the Law, in its original form, made the provisions of the statute applicable to business premises found within such 'controlled areas' as might be specified in Orders or Public Instruments made and published by the Council of Ministers from time to time, in the public interest.

And section 21 provided that until the publication of Ministerial Orders specifying the 'controlled areas' under section 3, but in no case for a period exceeding one month from the publication of the Law (28/4/61) no Court would have the power to make an ejectment order affecting business premises in the town areas specified in the section.

No Ministerial Orders having been made or published under sect. 3, until the 17th of October, 1961, the Legislature took the matter back in their hands by enacting and publishing an amending statute, Law No. 39 of 1961, whereby section 3 of the original Law was substituted by a section specifying the protected or 'controlled areas' and sect. 21 was abolished altogether.

The business premises constituting the subject-matter of this action is situated in the town of Famagusta and is admittedly covered by the abolished section 21, and by section 3 in its present form.

In these circumstances, the District Court took the view that "as there was no law in force on the 10th May, 1961 when the lease was already duly terminated, the defendants cannot be considered as being statutory tenants

as from the 10th May. The amendment of Law 17/61 (the District Court say in their judgment at p.14,E of the record) cannot be given a retrospective effect and the declaration of Famagusta Municipal limits as a controlled area came into force on the 17th October, 1961, when Law 39/61 was published in the Official Gazette".

Upon this view of the law; the District Court held that the premises were beyond the protection of the enactments in question, and made on the 3rd May, 1962, the ejectment order attacked by this appeal.

There can be no doubt that this order could not be made during the one month's period from the 28th April, 1961, as the premises came clearly within section 21 of the original statute, published on that date. And it would seem equally clear that there was nothing to prevent the making of the ejectment order after expiry of that period, and until the publication of the amending Law (No. 39 of 1961) on the 17th October, 1961. But as from that date, the Law enacted and published in April, stood as amended; and sect. 3 of the amended statute, clearly covers the premises in question.

When making the ejectment order on the 3rd May, 1962, the Court had to apply the statute as it stood at that time, including section 10 thereof which governs the position, not only in actions filed after the publication of the Law on the 28th April, 1961, but also in actions 'pending' at that time, as expressly provided in sect. 20.

The effect of this section was considered in *Georgallides v. Constantinides* (Civil Appeal 4362 decided in June 1962) where the District Court of Nicosia took the view that an ejectment order contained in a judgment for possession, obtained before the enactment of the Rent Control (Business Premises) Law, (17 of 1961) but still unexecuted, was a 'pending action' within sect. 20, and could not be enforced after publication of the statute in question for the ejectment of the defendant from a business premises in a protected area. This Court, allowing the landlord's appeal, held that the provisions of the statute in question, "are not applicable to actions for the recovery of possession where the Court had already adjudicated upon the rights of the parties and made an ejectment order or an order for possession, prior to the enactment of the statute".

1962
Nov. 20
1. GEORGIOS
CHAR.
TAMBOURLA
2. MAROULLA
LIASOULI
KARASAVVA
v
NINA SIMON
Vassiliades

1962
Nov. 20
—
1. GEORGHIOS
CHAR
TAMBOURIA
2. MAROULLA
LIANOU
KARASAVVA
v.
NINA SIMAN
—
Vassiliades, J.

In this case the landlord's action was filed after the publication of the Law in April, 1961 ; and even if one were to take the view adopted by the District Court, that the premises did not come within the provisions of the statute until the publication of the amending Law in October, 1961, we are unanimously of the opinion that reading, as we must do, sect. 20 as part of the statute, enacted for the purposes clearly stated therein, we must hold that the ejectment order made on the 3rd May, 1962, was made in a 'pending action' within sect. 20 ; and it could only be made subject to the conditions and requirements of the protecting statute. Upon this view of the law, the appeal must succeed ; and judgment be entered for the appellants-defendants, setting aside the ejectment order made against them, as well as the consequential order for mesne profits. The rights of the parties in respect of the premises in question, are to be sought within the statute.

As to costs, we take the view that as the respondent was within her rights in filing and prosecuting the action until the 17th October, 1961, she is entitled to her costs in the District Court up to that date inclusive. Applying sect. 20 to the costs incurred thereafter, including costs in the appeal, we direct that in the circumstances of this case each party should bear own costs.

Appeal allowed.