

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

CHARIS E. GEORGHALLIDES

*Appellant (Plaintiff).*

ANDREAS CONSTANTINIDES

*Respondent (Defendant).*

*(Civil Appeal No. 4362).*

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v.  
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*Landlord and tenant—Writ of possession—Stay of—Issue of a writ of possession and proceedings incidental thereto are not a "pending action" within section 20 of the Rent Control (Business Premises) Law, 1961 (Law No. 17/61).*

*Statutes—Construction of—Clear provision required to affect retrospectively rights already acquired.*

In an action for ejectment the District Court of Nicosia made on the 4th of January 1960 an ejectment order directing the respondent-defendant to evacuate and deliver up vacant possession of certain business premises to the appellant-plaintiff on or before the 1st October 1960. The respondent-defendant having failed to deliver vacant possession on expiry, the appellant obtained from the District Court on 4th November 1960 leave to issue writ of possession. In granting such leave the Court gave a further extension of possession for a period by directing that the writ was not to be executed earlier than the 15th of February 1961. But the respondent-defendant again failed to quit the shop. On 2nd March 1961, an unsuccessful attempt was made by the bailiff to execute the writ of possession. On the following day an application for stay of execution was made which was heard on the 18th March 1961, when the Court ordered that the execution of the writ be stayed until the 18th May 1961, on condition that the respondent-defendant makes certain payments to the landlord for the use of the premises.

The appellant-plaintiff lodged an appeal against that order on the 31st March 1961 which was held by the High Court on the 28th April 1961 to have been purely academic inasmuch as the order of stay became inoperative as from the 28th March, 1961, because the respondent-defendant failed to make the money lodgement on the 27th March as specified in the order of stay (*Charis Georghallides v. Andreas Constantinides*).

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1961 C.L.R. 95). Matters stood at that when on the 28th April 1961 the Rent Control (Business Premises) Law, 1961, (Law No. 17/61) was published and which, it should be noted, did not come into force until October 1961. On the 18th May 1961, the respondent-defendant filed a fresh application for stay of the aforesaid order (writ of possession) made by the District Court of Nicosia on the 18th March 1961 (*supra*), relying this time on section 20 of Law No.17/61 (*supra*) which provides that the provisions of that Law apply to "pending actions".

The last mentioned application was heard by the District Court on the 5th of July 1961 and judgment was delivered on the 30th December 1961 whereby a further stay was granted. The trial Judge, relying on certain dicta in Chancery proceedings (apparently in the cases *Emeris v. Woodward* (1889) 43 Ch. D. 185; *Ainsworth v. Wilding* (1896) 1 Ch. 673), held that the present proceedings were "pending action" and that, consequently, Law 17/61 is applicable in this case. On appeal by the plaintiff against that order the High Court,—

*Held*: (1) True, by section 20 of Law No. 17/61 (*supra*) the provisions of that Law apply also to "pending actions".

(2) But nothing short of clear express provisions in a statute can affect retrospectively the rights of a citizen as declared by judgment of a Court of competent jurisdiction.

(3) Section 20 of Law 17 of 1961 (*supra*) does not make the provisions of that new Law applicable to cases already adjudicated upon, and found in the advanced stage of execution which this case had reached when the Law came into force in October 1961.

*Appeal allowed.*

### Appeal.

Appeal against the order of the District Court of Nicosia (Ch. K. Pierides D.J.) dated the 30th December, 1961 (Action No. 3426/59) whereby it was ordered that the execution of the writ of possession issued in the above action be stayed for so long as Law No. 17/61 is in force in its present form.

The appellant in person.

*S. S. Devletian* with *E. Salahi* for the respondent.

The judgment of the Court was delivered by :

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VASSILIADES, J. : This is an appeal against an order made by the District Court of Nicosia on the 30th December, 1961, staying the execution of a writ of possession issued by the same Court, to enforce a consent-judgment in an action for ejectment and recovery of possession of a shop in Nicosia. The appellant-landlord contends that the Rent Control (Business Premises) Law, No. 17 of 1961 by virtue of which, the order for stay was, apparently, made, is not applicable to this case. The appeal turns on this legal issue.

On expiry of a lease in writing for a period of five years, contracted in May, 1952, and commencing in June, 1953, the tenant (respondent in this appeal) continued in occupation of the shop from month to month on payment of the same rent.

By a notice in writing dated the 26th June, 1959, the appellant-landlord put an end to that tenancy and claimed delivery of his shop by the 1st September, 1959. Failing to recover possession in that manner, the appellant instituted the present action for ejectment on the 10th September, more than two-and-a-half years ago.

The claim was opposed ; pleadings were exchanged ; and the action came on for hearing before the District Court of Nicosia, on the 4th January, 1960, when counsel acting for the parties respectively, declared settlement on the following terms, recorded by the Judge :—

“1. Defendant admits that he is a trespasser and agrees to evacuate the subject matter of this action on or before 1.10.1960.

“2. Defendant to continue paying the same rent till evacuation of the said premises.

“3. Defendant is entitled upon giving a month's notice in writing to evacuate the premises earlier than the 1.10.1960”.

The intention of the parties in making this settlement, as it may be gathered from the record, is perfectly clear, and requires no comment.

Upon these declarations, the trial judge gave judgment

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to the appellant-plaintiff and made an ejectment order, in the presence of respondent's advocate, in the following terms:

"This Court doth hereby Order and adjudge that the defendant do evacuate and deliver up vacant possession of the premises, the subject matter of this action, a shop situate at Ledra Street No. 210, Nicosia, on or before the 1.10.60 to the plaintiff.

No order as to costs".

This judgment was formally drawn up on the 9th January, 1960, and an endorsed copy thereof, was served on the respondent in due course.

The effect of the settlement embodied in this judgment, was discussed in subsequent proceedings in connection with execution and was commented upon by the learned judge who made the order for stay, the subject-matter of this appeal. The object of the settlement and the terms of the judgment are so clear, however, that I consider it unnecessary to deal with that matter. Mere reading of the endorsement on the office-copy of the judgment served on the respondent, is sufficient to make the effect of the ejectment order perfectly clear in anybody's mind.

The parties acted upon the settlement embodied in the consent-judgment during the period therein provided i.e. until 1.10.60. But the respondent failed to deliver vacant possession on expiry; and the appellant obtained from the Court on the 4th November, 1960, in the presence of respondent's advocate, leave to issue writ of possession.

In granting such leave, the Court gave to the respondent at the request of his advocate, a further extension of possession for a period of over 3 months by directing that the writ was not to be executed earlier than the 15th of February, 1961. But the respondent again failed to quit the shop. About two weeks after expiry of that period, on the 2nd March, 1961, "an attempt was made" (according to the judgment before us. At p.23, 'B' of the record) by the bailiff of the District Court, to execute the writ of possession. But there is nothing on the record to explain why that attempt failed.

Be that as it may, however, on the following day, 3.3.61, an application for stay of execution, was made, which was heard on the 18.3.61, when "the Court ordered that the exe-

cution of the writ of possession be stayed until the 18.5.61 on certain conditions which are included in the order", the record says (at p. 23, 'D'). These were the payment in Court by a certain date of money payable to the landlord for the use of his property, as they appear in the judgment of this Court in Appeal No. 4335 in this same action (vide 1961 C.L.R. 95).

One could pause here to wonder what legal justification was there, for these obstacles in the way of the execution of a judgment to enforce property-rights by the appropriate legal process? The Rent (Control) Law, (Cap.86) had ceased to affect business premises as from January, 1959. And the respondent when sued for possession in September, 1959, admitted before the Court for the purposes of a consent-judgment, that he was a trespasser.

A few days after that order for stay, the appellant challenged its validity by filing appeal No. 4335 before this Court. The appeal was heard on the 27th and 28th April, 1961, when it appeared that the respondent, having failed to make the money-lodgments specified in the order, by the 27th March, the stay became inoperative as from the 28th March; and the appeal filed against that order on the 31st March, was, therefore, purely academic.

The parties to the present appeal, as well as the learned District Judge who heard the proceedings in the subsequent application for stay filed by the respondent on the 18.5.61, must be taken to have read the judgment of this Court in the previous appeal (No. 4335) in this same action, the third paragraph of which reads :-

"In fact the applicant-defendant did fail to make the lodgment in Court on or before the date mentioned in the Order. As from the 28th March, 1961, the stay became inoperative because, by the express terms of the order, 'the plaintiff was entitled to proceed to execute as from the 28th March, 1961. That was the position from the 28th March, 1961, onwards. On the 31st March, three days later, the present appeal was started by a notice of appeal. It is the view of this Court that on the day the appeal was commenced, the first ground of appeal was purely an academic one, not directly affecting or capable of affecting the rights either of the plaintiff or the defendant".

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And the judgment of this Court ended at p.3 with these observations :—

“We have not been impressed with the attitude and conduct of the defendant throughout these proceedings. He has delayed and obstructed as far as he could the landlord from recovering possession of the property to which the Court has already declared that he is entitled. We shall not allow any costs”.

Notwithstanding this judgment, the respondent filed on the 18th May, 1961, a fresh application for stay, relying, this time, on a new law published on the 28th April, 1961 (the very same date of the judgment in appeal No. 4335) ; Law 17 of 1961.

It was the case of the respondent in his fresh application, that the provisions of the new law were applicable to his case by virtue of sections 20 and 21 of the law.

In the course of the proceedings counsel for the respondent had to admit that his client could not possibly rely on section 21, after expiry of the period of one month, therein provided ; and he had to confine his case to the provisions of section 20. This was a pending action, he submitted ; and section 20 made the new law applicable to such actions. He referred the Court to the meaning attached to the expression “pending” proceedings in two Chancery cases decided in England in the last century, and cited in support, notes from the Annual Practice.

The learned District Judge heard both sides on the 5th June, 1961, and reserved judgment until the 30th of December. In the meantime an amending law, No. 39 of 1961, published on the 17th of October, 1961, made the principal law, 17 of 1961, applicable, inter alia, to Nicosia town.

After citing section 20 in the following translation :

“The provisions of the present law apply also to pending actions for recovery of possession of business premises, provided that the Court at the trial of such actions may give such order as regards costs as the Court would, under the circumstances, consider proper”,

and after making reference to part IV and section 10 of the law, the learned judge says in the second page of his judgment :

"In view of the above-mentioned provisions of Law 17/61 the main questions for consideration are :—

"(a) Whether the present action is a pending action, or not ; and

"(b) If it is a pending action, whether Law 17/61 is applicable to it, or not".

In the next eight pages, the judgment gives the reasons for which the trial judge relying on dicta in Chancery proceedings, in completely different circumstances, answered both these questions in the affirmative, and made the order for stay of the writ of possession, attacked by this appeal.

Both the Greek and the Turkish texts of section 20, are, in the opinion of this Court, clear on the point that the provisions of Law 17 of 1961, are not applicable to this case. They 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 law in question.

Section 20 must be read as part of the whole law. And if so read, it is clearly inapplicable to cases where the rights of the parties stood settled by a judgment of a competent Court, at the time when the law was not in existence.

Section 10(1) provides (in translation from the Greek text) that

"no judgment and no order ἐκδίετα (shall be given or made) for the recovery of possession . . . . . excepting in the following cases . . . . .

and section 10(2) provides that "the Court giving judgment or order under this section may . . . . . suspend or stay the execution of the judgment or order, or postpone the date for possession for such a period, not exceeding one year, and subject to such conditions, if any, as the Court might think fit".

(Also in translation from the Greek text).

It is not even suggested that the order for a stay could be made under section 10. And section 20, in the part of the law making provisions under the heading "Miscellaneous", makes the law applicable to "pending actions" for the recovery of possession, making reference to the costs in such

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actions ; but making no reference whatever, to the execution of judgments and orders already made, and now found in the course of execution. Nothing short of clear and express provisions in a statute can affect retrospectively the rights of a citizen as declared by judgment of a Court of competent jurisdiction.

Reading both the Greek and the Turkish texts of the law as a whole, and the text of these sections 10 and 20 in particular, this Court is, as already stated, clearly of opinion that section 20 does not make the provisions of the new law applicable to cases already adjudicated upon, and found in the advanced stage of execution which this case had reached when the law came into force in October, 1961.

The foundation upon which the order for a stay was made by the District Judge, in this so undeserving case, therefore, fails ; and the order must be discharged.

Appeal allowed. Order for stay made on the 30th December, 1961, discharged. With costs for the appellant, here and in the District Court.

*Appeal allowed.*