

1978 May 31

[HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

I. G. KASOULIDES & SON LTD.,

Appellants (Applicants),

v.

N. & M. HADJIPAVLOU ESTATE LTD.,

Respondents.

(Civil Appeal No. 5723).

Rent Control Law, 1975 (Law 36/75)—Stricken area—Section 3 (2) of the Law—Adjustment of rent in stricken areas under section 10 of the Law—Has nothing to do with determination of rent under section 7 of the Law—Trial Judge’s discretion exercised by taking into consideration all facts and circumstances—No reason to interfere with Judge’s discretion or disagree with his application of the Law on the matter—Iacovidou v. Constantinou (1976) 2 J.S.C. 246 at pp. 250–251 applied. 5

Landlord and tenant—Stricken area—Adjustment of rent—Section 10 of the Rent Control Law, 1975 (Law 36 of 1975). 10

The appellants who were tenants of shops within a striken* area applied, under section 10 of the Rent Control Law, 1975 (Law 36/75), for the adjustment of the rent payable in respect of such shops on the ground that on account of their proximity to the Turkish occupied areas their printing business was adversely affected and substantially reduced. 15

The trial Court having particularly taken into consideration the reduction of the business in the area (see s. 10 (2) of the Law at p. 343 *post*) reached the conclusion that the fair rent should be £55 per month as from the 1st October, 1974 instead of £100 which was the rent payable until then. 20

* See Order of the Council of Ministers made under section 3 (2) of the Rent Control Law, 1975, published under Notification No. 213 in Suppl. No. 3 to the Official Gazette of the 8th November, 1975.

The tenants appealed contending that the trial Judge proceeded to decide the case limiting himself to the provisions of section 10 of Law 36 of 1975 (*supra*) which he applied disjunctively from the other provisions of the Law and especially section 7
 5 thereof and that in any event the rent assessed by him was not a reasonable one in the circumstances. On the other hand the landlords cross-appealed contending that the rent as assessed was too low and should be increased.

Held, (1) that in ascertaining the reasonable rent the Court
 10 must take into consideration the reduction of the business in the area and under section 10 (1) this power is given independently of other provisions of the law; that an application for adjustment of the rent had to be made within two months from the publication of the order under section 3 (2) of the law; and that
 15 section 7 has nothing to do with section 10 in the sense that a tenant in a controlled area, whether for a business premises or a house, may at any time apply to the Court to have the rent assessed thereunder.

(2) That as the trial Court has taken into consideration all
 20 facts and circumstances placed before it by the evidence adduced on behalf of the applicants and in addition the 20 per cent reduction to which the applicant was entitled as a stricken person, by virtue of section 15 (c) of the Law, there is no reason to interfere with the exercise of the Court's discretion or disagree with the application of the law on the matter. (Principles
 25 laid down in *Iacovidou v. Constantinou* (1976) 2 J.S.C. 246 at pp. 250-251, regarding the grounds on which the Court of Appeal will interfere with the conclusions of the trial Court relating to the evaluation of the relevant factual situation and to the assessment of the rent, *applied*).

Appeal and cross-appeal dismissed.

Cases referred to:

Level Tachexcavs v. Kargotis (1970) 1 C.L.R. 163;
 35 *Iacovidou v. Constantinou* (1976) 2 J.S.C. 246 (to be reported in (1976) 1 C.L.R.).

Appeal and cross-appeal.

Appeal and cross-appeal against the judgment of the District Court of Nicosia (Papadopoulos, S.D.J.) dated the 6th April, 1977, (Application No. 256/75) whereby the monthly rent of

thirteen shops at Mani Syreet, Nicosia, was fixed at £55.- per month as from the 1st October, 1974 as against £100 per month payable until then.

C. Velaris with I. Spanopoulos, for the appellants.

E. Ioannou (Mrs.), for the respondents.

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Cur. adv. vult.

The facts sufficiently appear in the judgment of the Court.

HADJIANASTASSIOU J.: The judgment of the Court will be delivered by Mr. Justice A. Loizou.

A. LOIZOU J.: This is an appeal and cross-appeal from the judgment of the District Court of Nicosia, by which, on the application of the appellants under section 10 of the Rent Control Law, 1975 (Law No. 36 of 1975) (hereinafter to be referred to as the "Law"), the rent of thirteen shops used by them for their printing works, situated at Mani, Street, Nicosia, was fixed at £55 per month as from the 1st October, 1974 as against the £100 per month rent payable until then.

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Mani Street is within a part of Nicosia which the Council of Ministers by Order under section 3 (2) of the Law, published under Notification No. 213 in Suppl. No. 3 to the Official Gazette of the Republic No. 1234 of the 8th November, 1975 declared as a stricken area, having considered it necessary or expedient to do so, because, on account of its proximity to dangerous points, the usual carrying out of work was adversely affected and substantially reduced, and this measure was made imperative to be taken for their relief.

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In consequence of this order the appellants being tenants of shops within the stricken area, were entitled to apply, under section 10 of the Law, for the adjustment of the rent on the ground that, on account of their proximity to the Turkish occupied areas—they are almost on the confrontation line—their printing business was adversely affected and substantially reduced. In fact, for the first few months after the invasion, no business could be carried out, not only because of the dangers involved in having access to the premises in question, but also because electricity supply was out, telephones disconnected and there were problems with the water supply and sewage.

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The trial Judge, on the evidence before him, came to the

conclusion that the appellants had been badly affected by the situation; their business came to a standstill during the first few months and though it started gradually improving, yet, it did not reach the pre-war levels, as it employed only 25 employees
 5 as against 50 before; in effect they were more than doubly affected, though a printing press was not of the kind of business that could be greatly affected by the non extensive circulation of people in the area as on account of its nature, work could be carried out over the phone provided their prices were competitive; account was also taken of the fact that part of the
 10 shops in question was used by the National Guard and he reached the conclusion that the fair rent in the circumstances should be £55 per month, having borne in mind also the provisions of section 15 (c) of the Law and the movement of the area as stated in section 10 (2) of the Law and in particular having
 15 taken into consideration the reduction of the business in the area.

The case for the appellants is that the learned trial Judge proceeded to decide the case limiting himself to the provisions
 20 of section 10 of the Law which he applied disjunctively from the other provisions of the Law and especially section 7 thereof and that in any event the rent assessed by him was not a reasonable one in the circumstances.

On the other hand, the respondents/landlords by their cross-
 25 appeal, claim that the rent as assessed was too low and should be increased.

Section 10 (2) of the Law reads as follows:

“ Εἰς ἤν περίπτωσιν ὑποβάλλεται τοιαύτη αἴτησις εἰς τὸ
 Δικαστήριον τὸ Δικαστήριον ἐξετάζει ταύτην καὶ κατόπιν διε-
 30 ξαγωγῆς τοιαύτης ἐρεύνης οἶαν τοῦτο ἤθελε θεωρήσει κα-
 τάλληλον καὶ παροχῆς εἰς ἓν ἕκαστον τῶν διαδίκων τῆς
 εὐκαιρίας νὰ τύχη ἀκροάσεως, καθορίζει τοιοῦτον ποσὸν ὡς
 καταβλητέον ἐνοίκιον οἷον τὸ Δικαστήριον, λαμβανομένης ὑπ-
 ὄψιν τῆς μειώσεως τῶν ἐργασιῶν τῆς περιοχῆς, ἤθελε θεω-
 35 ρήσει λογικὸν καὶ τὸ οὕτω καθορισθὲν ποσὸν θεωρεῖται ὡς
 τὸ ἐνοίκιον τὸ ὁποῖον ὁ ἐνοικιαστὴς ὑποχρεοῦται νὰ καταβάλ-
 λῃ εἰς τὸν ἰδιοκτήτην.”

(“ Where such an application is made to the Court, the Court shall consider it and after making such inquiry as

it may think fit, and giving to each party an opportunity of being heard, shall determine such an amount as rent payable as the Court, having regard to the reduction of business in the area, may think reasonable, and such sum determined shall be considered as the rent which the tenant must pay to the landlord.”). 5

The aforesaid section empowers a Court to fix the reasonable rent in respect of business premises in a stricken area, so declared under section 3 (2) of the Law. In ascertaining the reasonable rent, the Court must take into consideration the reduction of the business in the area and under section 10 (1) this power is given, independently of other provisions of the Law; moreover, an application for that purpose had to be made within two months from the publication of the order under section 3 (2) of the Law. In contra-distinction, section 7 of the Law empowers a Court to adjust rents either by increasing or reducing them for both houses and shops within a controlled area. 10 15

Section 7 has nothing to do with section 10 in the sense that a tenant in a controlled area whether for a business premises or a house, may at any time, apply to the Court to have the rent assessed thereunder. A person who applied under section 7 was not precluded from applying under section 10, within the time specified, upon the declaration of a part of a controlled area as a stricken area. In ascertaining, however, what is reasonable rent under section 10 the discretion of the Court is not thereby restricted; the Court is moreover entitled to take into consideration the reduction of the business in the area. In other words, in addition to the factors personal to the tenant and the landlord, connected with the events that necessitated the declaration of a part of a controlled area as stricken under section 3 (2) of the Law that are relevant in arriving at the reasonable rent, it introduces also the factor of the reduction of the business in the area which is one of the most material in declaring an area as stricken. We need not therefore refer to the case of *Level Tachexcavs v. Kargotis* (1970) 1 C.L.R. 163, followed also in the case of *Iacovidou v. Constantinou* (1976) 2 J.S.C. p. 246*, as the principles governing the exercise of the Court's discretion under section 7 (2) of Law 17/61, which corresponds to s. 7 (2) of the Law, have no direct bearing 20 25 30 35

* To be reported in (1976) 1 C.L.R.

with the exercise of the Court's discretion under section 10 (2) of the Law.

5 In the present case, the Court did take into consideration all facts and circumstances placed before it by the evidence adduced on behalf of the applicants and, in addition, as it clearly states in its judgment, the fact that by virtue of section 15 (c) of the Law, a 20 per cent reduction to which the applicant was there-
under entitled as a stricken person.

10 We may conclude in this case by repeating what was stated in the case of *Iacovidou v. Constantinou* (*supra*) at pp. 250-251:-

15 "The evaluation of the relevant factual situation is primarily the task of a trial Court and this Court is particularly reluctant to reverse a trial Court on the question of what, in all the circumstances, it thinks as being the reasonable
20 rent to be approved or the reasonable amount of the increase or reduction thereof. In order that this Court should interfere with such a conclusion, it should have been satisfied that the trial Court has acted upon a wrong principle of law or has misapprehended the facts or has made a wholly erroneous estimate of the reasonable rent which is not the case."

Applying with equal force the aforesaid approach to the present case, we say that we find no reason to interfere with the exercise of the Court's discretion.

25 For all the above reasons both the appeal and the cross-appeal are dismissed, as we find no reason to interfere with the exercise of the trial Judge's discretion or disagree with the application of the Law on the matter, and in the circumstances we make no order as to costs.

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Appeal and Cross-appeal dismissed. No order as to costs.