

1979 June 8

[TRIANTAFYLIDIS, P., DEMETRIADES, SAVVIDES, JJ.]

VEREGGARIA P. PAPAKOKKINOI AND ANOTHER,
Appellants,

v.

CHRISTODOULOS XENOPHONTOS,
Respondent.

(Civil Appeal No. 5944).

Landlord and tenant—Statutory tenancy—Recovery of possession—Breach by the tenant of an obligation of the tenancy—Section 16(1)(b) of the Rent Control Law, 1975 (36/75)—Garage tenant repairing cars at a space other than that agreed upon by the parties—Not reasonable to make an order of eviction in the circumstances of this case. 5

Landlord and tenant—Statutory tenancy—Recovery of possession—Conduct constituting a nuisance to landlord and to persons in neighbouring premises—Section 16(1)(c) of the Rent Control Law, 1975 (36/75)—Even though test of reasonableness wrongly introduced by trial Judge, on the basis of the findings of fact made by him there does not appear to exist the necessary factual substratum on which he could have based an order of eviction on the above ground. 10

Landlord and tenant—Statutory tenancy—Recovery of possession—Deterioration of premises due to the conduct of the tenant—Section 16(1)(d) of the Rent Control Law, 1975 (36/75)—Test of reasonableness and factor of hardship erroneously introduced by trial Judge—Retrial ordered only as regards claim for eviction under the above provision. 15 20

The appellants, as owners of a garage on the outskirts of Paphos, which was in the possession of the respondent as a tenant, sought to evict him therefrom on the grounds set out in paragraphs (b), (c) and (d) of section 16(1)* of the Rent Control Law, 1975 (36/75). 25

* Quoted at pp. 772-4 *post*.

Regarding the first ground, which has been based on a breach by the respondent of an obligation of the tenancy in that he repaired cars at a space other than that agreed upon between the parties the trial Judge found* that the few instances in which cars were seen outside the garage in breach of the agreement could not justify an eviction order; regarding the second ground of eviction to the effect that the tenant was behaving himself in such a manner so as to cause nuisance to the appellants and to persons in neighbouring places the trial Judge found** that there was no nuisance; and with regard to the third ground, namely the deterioration of the premises due to the conduct of the tenant, the trial Judge stated that before granting the eviction order he had to be satisfied on the reasonableness of such an order and had to take into account the interests of the parties.

Upon appeal against the dismissal of the claim for eviction:

Held, (1) (with regard to the first ground) that this Court is in agreement with the trial Judge as regards the findings of fact which he has made, and it shares his view that, in the circumstances of the present case, it would not be reasonable to make an order of eviction.

(2) (With regard to the second ground) that the trial Judge has reached correct conclusions in relation to the essential facts relevant to this ground; that, even though he has erroneously approached this matter as, also, entailing a decision by him as to whether or not the particular circumstances were such as to render it reasonable for him to make an order of eviction on this ground, this misdirection on his part as regards the legal effect of the applicable to the matter statutory provision, namely of section 16(1)(c) of Law 36/75, cannot be treated as having materially affected the outcome of the proceedings before him, because, in any event, on the basis of the findings of fact, which he has made in connection with this aspect of the case, there does not appear to exist the necessary factual substratum on which he could have based an order of eviction on such ground; and that, therefore, in this respect, too, this appeal cannot succeed.

(3) (With regard to the third ground) that the trial Judge seems

* See the relevant part of his judgment at pp. 774-5 *post*.

** See the relevant part of his judgment at pp. 775-6 *post*.

to have wrongly introduced, in an unwarranted by the relevant statutory provision manner, a test of reasonableness; that he went further and brought in, also, the factor of hardship to the tenant, which is, again, not envisaged by the said provision; that in view of the manner in which the trial Judge has, apparently, approached the factual aspect of this part of the present case whilst labouring under a misdirection in law as regards the application of section 16(1)(d) of Law 36/75, it cannot be speculated what would have been eventually his decision if he had approached correctly in law this ground of eviction, unfettered completely by considerations such as reasonableness or hardship; that, therefore, the safer course, in the interests of justice, is to set aside this part of his judgment and to order a new trial before another Judge, as regards only the claim for eviction under section 16(1)(d) of Law 36/75.

Appeal partly allowed. Retrial ordered as regards claim for eviction under section 16(1)(d) of Law 36/75.

Appeal.

Appeal by the owners against the judgment of the District Court of Paphos (Demetriou, S.D.J.) dated the 31st March, 1979 (Rent Control Appl. No. 35/78) whereby their claim for the eviction of the tenant from a garage of theirs, situate at Paphos, was dismissed.

L. N. Clerides, for appellant No. 1.

Appellant No. 2 appeared in person.

Chr. Georghiades, for the respondent.

TRIANTAFYLLIDES P. gave the following judgment of the Court. The appellants are the owners of immovable property on the outskirts of Paphos, namely of a garage, which is in the possession of the respondent as a tenant.

The appellants have sought to evict therefrom the respondent on three out of the grounds which are set out in section 16 of the Rent Control Law, 1975 (Law 36/75). The relevant parts of such section read as follows:

“16.—() Ουδεμία απόφασις και ούδέν διάταγμα έκδίδεται διά την ανάκτησιν τῆς κατοχῆς οἰασθήποτε κατοικίας ἢ καταστήματος, διά τὸ ὁποῖον ἰσχύει ὁ παρῶν Νόμος, ἢ δια

τὴν ἐ τούτου ἔξωσιν ἐνοικιαστοῦ, πλὴν τῶν ἀκολούθων περιπτώσεων:

(α) _____

5 (β) εἰς περίπτωσιν καθ' ἣν οἰαδήποτε ὑποχρέωσις τῆς ἐνοικιάσεως πλὴν τῆς πληρωμῆς ἐνοικίου (εἴτε δυνάμει τοῦ ἐνοικιαστηρίου συμβολαίου, εἴτε δυνάμει τῶν διατάξεων τοῦ παρόντος Νόμου), ἐφ' ὅσον ἡ ὑποχρέωσις εἶναι σύμφωνος πρὸς τὰς διατάξεις τοῦ παρόντος Νόμου, ἠθετήθη ἢ δὲν ἐξετελέσθη ὑπὸ τοῦ ἐνοικιαστοῦ καὶ τὸ Δικαστήριον θεωρεῖ λογικὴν τὴν ἐκδοσιν τοιαύτης ἀποφάσεως ἢ τοιούτου διατάγματος· ἢ

10 (γ) εἰς περίπτωσιν καθ' ἣν ὁ ἐνοικιαστής ἢ πᾶς ἄλλος κατέχων ὑπ' αὐτὸν τὴν κατοικίαν ἢ κατάστημα ὑπῆρξεν ἐνοχος διαγωγῆς ἀποτελούσης ὀχληρίαν ἢ διαρκῆ ἐνόχλησιν διὰ πρόσωπα εἰς τὸ ἴδιον ἢ γειτνιαζόμενα ἀκίνητα ἢ εὐρέθη ἐνοχος ὅτι ἐνήργησεν ὥστε νὰ χρησιμοποιηθοῦν ἢ ἐπέτρεψε νὰ χρησιμοποιηθοῦν ἡ κατοικία ἢ τὸ κατάστημα διὰ παρανόμους ἢ ἀνηθίκους σκοποῦς· ἢ

15 (δ) εἰς περίπτωσιν καθ' ἣν ἡ κατάσταση τῆς κατοικίας ἢ τοῦ καταστήματος ἔχει, κατὰ τὴν γνώμην τοῦ Δικαστηρίου, ἐπιδεινωθῆ λόγῳ καταστρεπτικῶν πράξεων ἢ ἀμελείας ἢ παραλείψεως τοῦ ἐνοικιαστοῦ ἢ εἰς περίπτωσιν καθ' ἣν ὁ ἐνοικιαστής ἀδίκως ἐπροξένησεν ἢ ἐπέτρεψε τὴν πρόκλησιν σημαντικῆς ζημίας εἰς τὸ ἀκίνητον· ἢ

20 (ε) _____ ”

30 (“16.—(1) No judgment or order for the recovery of possession of any dwelling house or business premises to which this Law applies, or for the ejection of a tenant therefrom, shall be given or made except in the following cases:

(a)

35 (b) where any obligation of the tenancy other than the payment of rent (whether under the contract of tenancy or under the provisions of this Law), so far as the obligation is consistent with the provisions of this Law, has been broken or not performed by the tenant and the Court considers it reasonable that such judgment or order be given or made; or

(c) where the tenant or any other person occupying the

dwelling house or business premises under him has been guilty of conduct constituting a nuisance or continuous annoyance to persons in the same or neighbouring premises, or of causing or permitting the use of the dwelling house or business premises for illegal or immoral purposes; or 5

(d) where the condition of the dwelling house or business premises has, in the opinion of the Court, deteriorated owing to acts of waste by, or the neglect or default of the tenant or where the tenant has wrongfully caused or suffered to be caused substantial damage to the premises; or 10

(e)”)

The trial Court dismissed the claim of the appellants and, as a result, the present appeal has been lodged. 15

As regards the first ground for eviction, which has been based on a breach by the respondent of an obligation of the tenancy, we are in agreement with the trial Judge as regards the findings of fact which he has made, and we share his view that, in the circumstances of the present case, it would not be reasonable to make an order of eviction; in relation to this aspect of the case he has stated the following in his judgment, which may usefully be quoted:- 20

“ The other leg of the ground is that the respondent repaired cars at a space other than that agreed upon between the parties. In the course of the hearing few instances were mentioned where cars in need of repairs were seen outside the shop of the respondent in breach of the agreement. The respondent in his testimony explained that on exceptional occasions a car may have to be left outside the shop for a short time until it is accommodated in the garage for repairs. His counsel argued in his address that such instances cannot be treated as violations of the agreement to justify the ground for an eviction order. 25 30

I have considered the arguments of both sides on this ground in the light of the relevant law and the evidence adduced and have come to the conclusion that such instances cannot justify an eviction order. As I was led to 35

understand the alley is an open space where access may usually be gained by anybody. It is also in evidence that other garages and similar shops are in the area. A number of cars may consequently be seen in the alley for various reasons such as for parking purposes and repairs. This fact, however unpleasant may be for the applicants, should not affect my judgment to find that the respondent should be held liable or in any way answerable for acts of third persons over whom he has no authority or control. The result is, therefore, that this ground is also set aside as not having been proved sufficiently to justify an order for eviction”.

Regarding, next, the ground of eviction that the tenant is behaving himself in such a manner so as to cause nuisance to the appellants and to persons in neighbouring premises the trial Judge said:-

“ A similar line of thought may be followed in dealing with the third ground which is, as I said, that the respondent is causing a nuisance to the applicants as well as to the adjoining tenants. As I have already indicated the alley is far from being a tidy place. The first question is whether such a condition may fall under the definition of nuisance. In this context nuisance should be construed in a wider sense and be according to ‘the plain and sober and simple notions among the people’ (see *Megarry’s Rent Acts*, at p. 269). The learned author refers at p. 271 to the case of *Mac Iver v. Struthers*, 1924 S.L.T. 15 where it was held not to apply to permitting the premises to become dirty and malodorous if this adversely affects only the tenant himself and neither affects adjoining occupiers nor causes a deterioration of the premises. In *Woodfall on Landlord & Tenant (supra)* at p. 1192 it is also explained that ‘the nuisance or annoyance must be judged in relation to the adjoining occupier; the mere fact that there is a statutory nuisance under the Public Health Acts is not of itself sufficient under this clause though it may in a particular case constitute a breach of the implied covenant for tenant-like user.’ Whether the nuisance or annoyance has actually been occasioned is a question of fact for the trial Judge.

In this case there is evidence that the area outside the shop

is dirty, a condition which the Court might infer to affect adjoining occupiers but the evidence falls short in establishing any connection of this situation with the respondent. Considerable reliance was placed on the dirt caused by the respondent in the garage. At the same time allegations of *destruction of the premises were made to which I shall refer presently.* Even if I were to infer that such a condition may constitute a nuisance I must view this situation in the light of the fact that the shop was leased as a garage, with all the work incidental thereto. The condition adversely affecting the shop, must therefore be something more than what can be expected from the work carried out, and must extend to a degree to constitute a nuisance as explained above. In this case the evidence does not support such propositions. As a result, I find that this ground should also fail.”

We are of the opinion that the trial Judge has reached correct conclusions in relation to the essential facts relevant to this ground and we are, therefore, of the view that, even though he has erroneously approached this matter as, also, entailing a decision by him as to whether or not the particular circumstances were such as to render it reasonable for him to make an order of eviction on this ground, this misdirection on his part as regards the legal effect of the applicable to the matter statutory provision, namely of section 16(1)(c) of Law 36/75, cannot be treated as having materially affected the outcome of the proceedings before him, because, in any event, on the basis of the findings of fact, which he has made in connection with this aspect of the case, there does not appear to exist the necessary factual substratum on which he could have based an order of eviction on such ground; therefore, in this respect, too, we find that this appeal cannot succeed.

As regards the third ground of eviction, under paragraph (d) of subsection (1) of section 16 of Law 36/75, namely the deterioration of the premises due to the conduct of the respondent as the tenant, the trial Judge has stated the following in his judgment:

“ Apart from these factors I must bear in mind that to grant the order I must be satisfied on the reasonableness of such an order. Furthermore I must take into account the interests of the parties. Useful guidance of this point

may be derived from the explanation afforded in *Woodfall on Landlord & Tenant*, (*supra*) at p. 1184 at seq. where at p. 1185 the learned author states the following:-

5 'In exercising that discretion the Court is to take into account every' circumstance that might affect the interests of the landlord or of the tenant of the premises, including financial hardship which may result from the Court's order.'

Williamson v. Pallant, [1924] 2 K.B. 173).

10 Whilst appreciating the problem of the applicants caused by the condition of the area as a whole for which, as I have already found, the respondent cannot be held responsible, I am of the view that to grant the order applied for would undoubtedly affect the interests of the respondent to a
15 large degree. He is a man of rather poor means and has been carrying on his work there for a number of years and has the advantage to use part of the alley for the repairs of the cars apart from the garage. If an order is granted the respondent will be deprived of the advantages he is enjoying
20 now in the alley. Bearing in mind all the above and by applying the test of reasonableness as explained above, I find that the order for eviction should not be given on this ground."

25 The trial Judge seems to have wrongly introduced, in an unwarranted by the relevant statutory provision manner, a test of reasonableness; and he went further and brought in, also, the factor of hardship to the tenant, which is, again, not envisaged by the said provision.

30 In view of the manner in which the trial Judge has, apparently, approached the factual aspect of this part of the present case whilst labouring under a misdirection in law as regards the application of section 16(1)(d) of Law 36/75, we cannot speculate what would have been eventually his decision if he had
35 approached correctly in law this ground of eviction, unfettered completely by considerations such as reasonableness or hardship.

We, therefore, think that the safer course, in the interests of justice, is to set aside this part of his judgment and to order a

new trial before another Judge, as regards only the claim for eviction under section 16(1)(d) of Law 36/75.

As regards costs, we have decided to set aside the order for costs made against the appellants at the trial and to make no order as regards either the costs of the trial or of this appeal.

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Appeal partly allowed. Retrial ordered as regards claim for eviction under section 16(1)(d) of Law 36/75. Order for costs as above.

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