

1982 December 14

[HADJIANASTASSIOU, LORIS, PIKIS, JJ.]

ANDREAS SIZINOS,

*Appellant-Plaintiff,*

v.

KYRILLIS MASSOURIS,

*Respondent-Defendant.**(Civil Appeal No. 6224).*


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*Landlord and tenant—Statutory tenancy—Recovery of possession—  
Through misrepresentation and concealment of facts—Principles  
on which an action for damages will be sustained—And principles  
on which damages are assessed—Section 19 of the Rent Control  
Law, 1975 (Law 35/75).*

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The appellant was the tenant of a house belonging to the respondent. When the owner sought recovery of possession, under the provisions of section 16(1)(c) of the Rent Control Law, 1975 (Law 36/75) on the ground that the premises were reasonably required for occupation by his daughter, then in the United Kingdom, but expected to return with her husband to Cyprus and occupy the premises, the tenant, acting on the strength of the representations made in the application of the owner, consented to an order of ejectment, undertaking to vacate the premises by 31.5.79, a date coinciding with the expected return of the daughter of the owner to Cyprus. The daughter of the owner returned to Cyprus on June 2, 1979 and the premises were vacated on July 7, 1979. In the meantime, the daughter of the owner and her husband stayed at her parental home for ten days and then moved to Larnaca where they were accommodated at the house of the step-father of her husband. The daughter was awaiting the reassignment of duties to her at a government department where she served earlier, before leaving for the United Kingdom, apparently on leave without pay. Her husband was in search of employment. Soon after their movement to Larnaca, he was offered employment by her father-

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5 in-law, whereupon they made plans to stay at Larnaca, renting a flat. In less than a month, they abandoned plans to stay at Nicosia and the Nicosia flat, intended for their residence, was let, at or soon after its vacation by the tenant, at a rent considerably higher than previously collected, £40.- compared to £22. Following this development, the present proceedings were initiated for damages for fraud and/or damages under section 19\* of Law 36/75.

10 The trial Judge dismissed the action having held that the claim of the owner for recovery of possession was not fraught with misrepresentation or concealment of facts; but at the same time he assessed the damage of the tenant at £250.- in order to make possible final adjudication upon all issues in dispute in the event of appeal.

15 *Upon appeal by the tenant and cross-appeal by the owner who disputed the finding of the Court as to the damages:*

20 *Held*, that a misrepresentation of any kind, as well as concealment of facts, whether made bona fide or otherwise will sustain an action, provided that it produces loss or damage as a result of a judgment founded upon such misrepresentation or concealment; that since in this case the inevitable inference was that the need of the premises by the owner for use of his daughter was conditional on a future eventuality i.e. on his son-in-law securing employment in Nicosia; that since this important consideration was not disclosed to the Court at the time of presenting the application for recovery of possession; and that since in order to recover possession a landlord must establish a definite and immediate need of the premises had such consideration been disclosed it can be assumed with certainty that the order of ejection would have been withheld for, given the uncertainty as to the plans of the daughter and her husband, about the place of their settlement, there was neither a present nor immediate need for the premises; that, therefore, the

\* Section 19 reads as follows:

"19. If, after a landlord has obtained a judgment or order for possession or ejection under this Part, it is subsequently made to appear to the Court that the judgment or order was obtained by misrepresentation or the concealment of material facts, the Court may order the landlord to pay to the former tenant such sum as appears to be sufficient as compensation for damage or loss sustained by the tenant as a result of the judgment or order".

recovery of possession was secured because of a misrepresentation by the owner as to the need he had of the premises, innocent though it may have been, as well as a concealment of the true facts relevant to the need of the premises by his daughter; accordingly the appellant had established his case before the trial Court, and, the decision of the Court to the contrary cannot be sustained. 5

(2) That damage naturally arising in a claim under s.19, would be the difference in value between the rental of the premises in the open market and the rental actually paid; that that appears to this Court to be the principal loss that may be recovered in an action under s.19; that since no claim was made for such difference none is, therefore, recoverable in the present proceedings; accordingly the respondent is only entitled to nominal damages which are fixed at £10. 10 15

*Appeal allowed.*

Cases referred to:

*Moustafa v. Theocharous*, 18 C.L.R. Part 3, 183;  
*Thorn v. Smith* [1947] K.B. 307;  
*Andreou v. Christodoulou* (1978) 1 C.L.R. 192; 20  
*Aitken v. Shaw* [1933] S.L.T. 21.

**Appeal.**

Appeal by plaintiff against the judgment of the District Court of Nicosia (Artemides, S.D.J.) dated the 30th January, 1981 (Action No. 4066/79) whereby his claim for the recovery of damages under section 19 of the Rent Control Law, 1975 (Law No. 36 of 1975) was dismissed. 25

*N. Clerides* with *C. Saveriades*, for the appellant.

*Ph. Valiantis*, for the respondent.

HADJIANASTASSIOU J.: The judgment of the Court will be delivered by Mr. Justice Pikis. 30

PIKIS J.: This is an appeal from a judgment of the District Court of Nicosia, dismissing an action for the recovery of damages under s.19 of the Rent Control Law - 36/75. The claim originally made, also included a claim for damages for fraud but, as it transpires from the record, the case at the trial was pursued exclusively under s.19, conferring a right of action to a 35

tenant ejected in consequence of "misrepresentations" or "concealment of facts" made by the owner in proceedings leading to his eviction. The owner sought recovery of possession under the provisions of s.16(1)(G) of Law 36/75, on the ground that the premises were reasonably required for occupation by his daughter, then in the United Kingdom, but expected to return with her husband to Cyprus and occupy the premises. The tenant, acting on the strength of the representations made in the application of the owner, consented to an order of ejection, undertaking to vacate the premises by 31.5.79, a date coinciding with the expected return of the daughter of the owner to Cyprus. As a matter of fact, the daughter of the owner returned to Cyprus on 2.6.79 whereupon the owner demanded vacant possession of the premises still in the occupation of the tenant. However, no steps were taken to enforce the order, as they were entitled to. The tenant pleaded for an extension so as to make possible the completion of a flat he had purchased. Not long afterwards, just over a month, the premises were vacated, on 7.7.79. In the meantime, the daughter of the owner and her husband stayed at her parental home for ten days and then moved to Larnaca where they were accommodated at the house of the step-father of her husband. The daughter was awaiting the reassignment of duties to her at a government department whereto she served earlier, before leaving for the United Kingdom, apparently on leave without pay. Her husband was in search of employment. Soon after their movement to Larnaca, he was offered employment by her father-in-law, whereupon they made plans to stay at Larnaca, renting a flat. In the result, in less than a month, they abandoned plans to stay at Nicosia and, in consequence, the Nicosia flat, intended for their residence, was let, at or soon after its vacation by the tenant, at a rent considerably higher than previously collected, £40.- compared to £22.-. Following this development, the present proceedings were initiated for damages for fraud and/or damages under s.19. The tenant inflated his claim out of all proportion to any conceivable loss he might have suffered as a result of his ejection, including a claim for £700.- interest, payable for the purchase of the apartment he acquired.

Artemides, S.D.J., as he then was, was favourably impressed by the testimony of the owner and found him to have acted in good faith throughout, in contrast to the tenant who left him

with a poor impression not least because of the exaggeration of his claim. For example, he claimed £300.- removal expenses whereas he incurred none. Equally ill-founded was his claim for other expenses incurred or likely to be incurred because of the location of the tenant's new premises allegedly situate at a greater distance from the place of his employment, compared to the flat he previously occupied, whereas the distance between the two, to the place of his work, was approximately the same. The fourth item of damage claimed by the tenant, viz. £300.- compensation for the trouble suffered in having to move and anxiety arising from the conduct of the owner, was hardly articulated at all before the trial Court.

The learned trial Judge found for the owner, defendant in the proceedings before the trial Court and, dismissed the action. At the same time, he assessed the damage of the tenant, plaintiff in the proceedings, at £250.- in order to make possible final adjudication upon all issues in dispute in the event of appeal. It is not explained in the judgment how the learned trial Judge arrived at the figure of £250.-.

The tenant challenges in this appeal the finding of the trial Court, that the claim for recovery of possession was not fraught with misrepresentation or concealment of facts. By a cross-appeal, the owner disputes the finding of the trial Court as to the damage to which the owner would be entitled. In his submission, no damage was proved.

*Misrepresentation - Concealment of facts - under s.19 of the Rent Control Law:*

As the learned trial Judge correctly noted, innocent misrepresentation and concealment of facts suffice to establish a case under s.19. The meaning of the two expressions is not qualified by the section of the law itself, nor does the legislature use either expression as a term of art. Consequently, they must be interpreted in accordance with their popular meaning; therefore, misrepresentation of any kind, as well as concealment of facts, whether made bona fide or otherwise, will sustain an action, provided it produces the consequences laid down by the law, i.e. loss or damage as a result of a judgment founded upon such misrepresentation or concealment. There is no authoritative pronouncement on the interpretation of s.19 but a decision

of the Supreme Court, on the interpretation of the comparable provisions of s.2(2) of the *Increase of Rent (Restriction) Law*, 1942 (see also section 21, Cap. 86), is of considerable assistance and lends force to the view that it matters not whether the misrepresentation or concealment is made bona fide or mala fide -

5 *Ayshe Moustafa & Another v. Athena Theocharous*, 18 C.L.R. Part III, 183. Further, this interpretation is fully consonant with the spirit of the law and the intention of the legislature to make security of tenure for the tenants, as effective as the law

10 intends it to be.

A similar approach was adopted by English Courts regarding the interpretation of s.6(6) of the *Increase of Rent and Mortgage Interest (Restrictions) Act* 1920, conferring a kindred right to that created by s.19. The subject is discussed by *R. E. Megarry*

15 *in his work on the Rent Acts*, 10th ed., p. 297 et seq. As the learned author notes, it matters not that ejection was obtained as a result of a consent order so long as the consent is obtained or induced by the misrepresentations made or the withholding of material facts.

20 The "misrepresentation" or "concealment" must be objectively established, by reference to the representations made by the landlord in seeking recovery of possession. As Scott, L.J. observed in *Thorne v. Smith* [1947] K.B. 307, 312, the landlord claiming possession must show "the utmost good faith." What

25 the trial Court was required to decide, was whether the claim by the landlord for repossession of the flat rested on a misrepresentation or concealment of facts. To recover possession, a landlord must establish a definite and immediate need of the premises - *Andreou v. Christodoulou* (1978) 1 C.L.R. 192 -

30 "A genuine present need, something more than a desire, although something less than absolute necessity" - *Aitken v. Shaw* (1933) S.L.T. (Sheriff Court, p.21). The pertinent question was whether the owner misrepresented the need or concealed facts relevant to such need that ought to have been

35 disclosed, leading to the issue of the ejection order. For it appears to be well established that an action under s.19 is doomed to failure where possession would be recovered if the true facts had been known. (See, *Megarry*, supra, p.298). The learned trial Judge was impressed by the veracity of the

40 owner and found that he acted bona fide all along in claiming

recovery of possession. He found him to have misrepresented nothing. His daughter returned to Cyprus and would have assumed possession but for the failure of the tenant to vacate the premises on the day appointed. On the other hand, he did not purport to evaluate some facts that appear to us salient and tend to cast a different complexion on the representations made by the owner for the recovery of the flat. These are, the non occupation of the property by the daughter of the owner or any member of his family, notwithstanding the fact it was made available little longer than a month after the date previously appointed.

Another important fact that was omitted from consideration, was the letting of the property to third parties at the time when the premises were vacated. What one may infer from the conduct of the owner, his daughter and her husband is, that the need of the daughter for the premises, was dependent on the employment opportunities of her husband. In other words, the need of the owner for the premises for use by his daughter, was directly related to the place of employment of his son-in-law. As it proved, finding employment at Larnaca, led to the settling of the couple at Larnaca and not Nicosia, notwithstanding the fact that the daughter of the owner would have to travel daily to Nicosia for her work. We cannot accept that the short delay in making the flat available was the causative factor for the non possession of the premises by the couple in question. What led to that decision, was the fact that her husband secured employment in a town other than Nicosia. The inevitable inference is that the need of the premises by the owner for use of his daughter was conditional on a future eventuality, i.e. on his son-in-law securing employment at Nicosia. This important consideration was not disclosed to the Court at the time of presenting the application for recovery of possession. Further, if disclosed, we can assume with certainty the order would be withheld for, given the uncertainty as to the plans of the daughter and her husband, about the place of their settlement, there was neither a present nor immediate need for the premises. The result is that the recovery of possession was secured because of a misrepresentation by the owner as to the need he had of the premises, innocent though it may have been, as well as a concealment of the true facts relevant to the need of the premises by his daughter. In our

judgment, the appellant had established his case before the trial Court and, the decision of the Court to the contrary cannot be sustained.

*Damages:* The damage recoverable under s.19 must naturally arise and be attributable to the ill-founded dispossession. We need not pronounce conclusively on the items of damage that may be recovered under s.19. For the owner in this case did not prove to have suffered any damage whatever. One of the items claimed, i.e. interest payable for the purchase of an apartment, was obviously remote and, could not be recovered under s.19. He would have been entitled to be recompensed for removal expenses, had he incurred any. Also, he would have been entitled to additional transport expenses he might have to incur for travelling to work but, again, he proved none. Possibly, he could claim by way of general damages, damage for disturbance arising from interference with comfort as a result of noise or other objectionable conduct associated with the new premises but no claim was raised in this connection. Annoyance, as such, at the conduct of the owner, is not a legitimate item of damage under s.19. Damage naturally arising in a claim under s.19, would be the difference in value between the rental of the premises in the open market and the rental actually paid. That appears to us to be the principal loss that may be recovered in an action under s.19. But no claim was made for such difference and none is, therefore, recoverable in the present proceedings. In our judgment, the respondent is only entitled to nominal damages which we fix at £10.-. In the result, the appeal is allowed, the judgment of the District Court is set aside, as well as the order for costs.

There will be no order as to costs, either here or in the Court below.

*Appeal allowed with no order as to costs.*