CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

IN ITS ORIGINAL JURISDICTION AND ON APPEAL FROM THE ASSIZE COURTS, DISTRICT COURTS AND TURKISH FAMILY COURTS.

1954
Jan. 9.

LOUKIS ATTESHLIS
v.
EVANGELIA N. ZANNETIDOU

[HALLINAN, C.J., AND ZEKIA, J.]

(January 9, 1954)

LOUKIS ATTESHLIS, *Appellant,*

v.

EVANGELIA N. ZANNETIDOU, *Respondent.*

(*Civil Appeal No.* 4041)

Construction of statute—Objects of the statute and public policy—Increase of Rent (Restriction) Law (Cap. 108) section 8—"So long as tenant continues to pay rent"—4 days arrears not a discontinuance.

The plaintiff on 4th December issued a summons to eject the defendant, a statutory tenant, for non-payment of rent due on 30th November. The Increase of Rent (Restriction) Law (Cap. 108), section 8, precluded the Court from granting ejectment "so long as the tenant continues to pay rent." The District Court made an order for ejectment.

Upon appeal,

Held: It would defeat the object of the Law if the Courts so construed section 8 that landlords could take advantage of trifling delays in the payment of rent so as to obtain an ejectment order.

Note: Cap. 108 was repealed by the Rent (Control) Law, 1954. Ejectment for non-payment of rent in the case of statutory tenancies is now regulated by section 18 (1) (*a*) of the new Law.

Order of the District Court set aside.

Appeal by defendant from the judgment of the District Court of Famagusta (Action No. 1631/51) in favour of plaintiff.

A. Pouyouros for the appellant.

M. Montanios for the respondent.

Judgment was delivered by:

HALLINAN, C.J.: In this case the respondent-plaintiff is the landlord of certain premises at Famagusta which she leased to the appellant-defendant, the rent being payable monthly. The rent due at the end of November, 1951, had not been paid or tendered on the 4th December, and the

plaintiff on that day commenced proceedings to eject the appellant for non-payment of rent. The appellant lived next door to his landlord and had been in occupation of the leased premises since 1940. The contractual tenancy had been terminated and the appellant held the premises by virtue of a statutory tenancy. There is evidence that the landlord might obtain a much higher rent if she could eject the statutory tenant.

The trial Court found that nearly half the instalments of rent that have been paid since 1946 had been paid after the last day of the month to which they related. On one occasion the payment was 19 days late and on several others more than six days. The plaintiff never complained about any of these delays. It is apparent that the respondent has taken advantage of the manner in which the rent was paid in order to claim for ejectment for non-payment of rent. It was argued for the appellant in the Court below that, because of the conduct of the respondent acquiescing in the delay of the payment of rent for some days or even for a few weeks, she was estopped by her conduct from claiming the right to eject the appellant for non-payment of rent. The learned trial Judge on the authority of *Bird* v. *Hildage* (1947) 2 A.E.R. 7, in our opinion rightly, held that conduct of this kind did not constitute an estoppel. He accordingly found for the respondent and ordered the defendants to deliver up the premises.

We may say at once that the other defences raised by counsel for the appellant at the hearing of this appeal (similar to that of estoppel), such as waiver, acquiescence and laches cannot be established any more than the defence of estoppel. Nor do we consider that the conduct of the parties in the payment and receipt of rent constitute a variation of the contract of lease. There is, however, one matter which the trial Court does not appear, from its judgment, to have considered and which falls to be determined in this appeal, namely, what construction should be placed on the phrase "so long as the tenant continues to pay rent" in section 8 of the Increase of Rent Restriction Law (Cap. 108) which begins as follows:

> "No judgment or order for the ejectment of a tenant from premises to which this Law applies shall be given or made so long as the tenant continues to pay rent at the agreed rate as modified by this Law and performs the other conditions of the tenancy, except etc., etc."

The present provision in English law which corresponds to our section 8 is the 1st Schedule to the Rent and Mortgage Interest Restriction (Amendment) Act, 1933. Under this enactment a Court can make an ejectment order if "any rent lawfully due by the tenant has not been paid" and this expression (according to the decision in *Bird* v. *Hildage*)

means rent for which the landlord could sue or distrain at the time when proceedings are instituted, that is to say rent which is due and has neither been paid or tendered when action is brought. The statutory power to relief against forfeiture in the case of contractual tenancies cannot be exercised in respect of statutory tenancies under the English Rent Acts or under the corresponding Law (Cap. 108) in Cyprus. But the 1st Schedule to the English Act of 1933 provides the Court with a discretionary power to grant or refuse an ejectment order even when the landlord proves that rent is lawfully due and not paid; the Court only makes an order if it "considers it reasonable so to do." In Cyprus, there is no such discretionary power. Even in the case of contractual tenancies we have no statutory provision for relief against forfeiture although there probably exists the equitable right to relieve against forfeiture for non-payment of rent. These are sad gaps in our legislation and must gravely handicap our Courts in doing justice between landlord and tenant.

However, though our Courts lack the discretionary power of the Courts in England to grant or refuse an order for ejectment, the phrase "so long as the tenant continues to pay rent" has not the precision of the corresponding English provision: "if any rent lawfully due from the tenant has not been paid." In my view the Courts must give to the phrase in our Law such construction (if it can reasonably bear it) as will not defeat the object of the legislative authority and the mischief which the statute was intended to remedy. The object of the statute is to prevent landlords from regaining possession of houses and reletting them at higher rents due to scarcity. It would defeat this object if the Courts so construed section 8 that landlords could take advantage of trifling delays in the payment of rent so as to obtain an ejectment order. In the present case the plaintiff-respondent took advantage of a customary practice concerning the time when rent was paid to commence proceedings four days after the rent was due. We are not concerned here with the equities between the parties; we do not decide this issue on such defences as estoppel or waiver, but on the ground of public interest which requires the Courts so to construe a statute (when the words will bear such construction) "as to suppress the mischief and advance the remedy" as was said long ago in the Magdalen College Case (1616, 11 Rep. 71 *b.*).

It has been argued for the respondent that certain English authorities support the construction which the respondent gives to section 8. The cases of *Beavis* v. *Carmen* (1920) W.N. 151, *Kelly* v. *White* (1920) W.N. 220, and *Gaskell* v. *Roberts* (1920) W.N. 220 were decided when the phrase "so long as the tenant continues to pay rent" was in the English Rent Acts—that is in the Rent and Mortgage Interest (War Restrictions) Act 1915. In these cases rent was in arrears,

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and the Courts held that the statute gave them no discretion—an order for ejectment must be made. However, we have looked at the facts in these English cases; in each one the rent was considerably in arrears, and the landlords had served notices to terminate the contractual tenancies because of these arrears; these were not cases of a landlord suddenly pouncing on a tenant for a trifling delay in paying his rent.

This appeal is accordingly allowed. The order of the trial Court must be set aside and the respondent's claim dismissed. The appellant is entitled to his costs here and below.

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ARTEMIS VASSILIADES AND OTHERS
v.
AFRODITI VASSILIADOU

[HALLINAN, C.J., AND ZEKIA, J.]
(January 9, 1954)

ARTEMIS VASSILIADES AND OTHERS, *Appellants,*

v.

AFRODITI VASSILIADOU, *Respondent.*

(*Civil Appeal No.* 4043)

Fraudulent Transfers Avoidance Law (Cap. 95)—Claim by transferee to balance after creditors satisfied—Locus standi of heirs of bankrupt vis-a-vis the trustee in bankruptcy—Res judicata—Claim not to vary but to interpret legal effect of previous order.

In 1939 the plaintiff's father transferred nearly all his property to her and in 1940 he was declared bankrupt. In 1941 her brother, the 2nd defendant, as a judgment creditor of her father obtained an order setting aside the transfers of 1939, which order was upheld in the Supreme Court and in the Privy Council in 1944.

In 1945 the plaintiff applied to review or amend the order setting aside the transfers so that any surplus after satisfying the creditors should be for the plaintiff. The District Court held that it had no jurisdiction as the Privy Council had not ordered a new trial. In June, 1946, all the creditors were paid off in the bankruptcy and the surplus balance was vested in the trustee in bankruptcy under section 31 of the Bankruptcy Law.

In 1951 the plaintiff brought the present proceedings claiming a declaration that she was entitled to the surplus after satisfying the creditors.

The District Court held that the defendants other than the trustee in bankruptcy had no "*locus standi*"; that the proceedings in 1945 did not make the claim "*res judicata*"; and that the plaintiff was entitled to the declaration as claimed.

Upon appeal,

Held: (i) Before bankruptcy proceedings are concluded and the creditor satisfied, the debtor, his heirs or transferees can have no *locus standi;* but after all creditors are satisfied, any