[JOSEPHIDES, D. J.]
(Jan. 16, 1954)

ELENI EVANGELOU, *Plaintiff,*

v.

A. D. CROMPTON, *Defendant.*

(District Court of Nicosia—
Action No. 51/53)

Landlord and tenant—Landlord's breach of covenant—Equitable defence of promise by tenant affecting legal relations—Principle in Central London Property Trust Ltd. v. *High Trees House Ltd.*

The plaintiff (landlord) had covenanted in his lease with defendant (tenant) to provide him with reasonable quantity of water, for breach of which duty the defendant had, *inter alia*, the right to terminate the lease without previous notice. The plaintiff broke this covenant and the defendant agreed to accept a new arrangement for the supply of water, but about a month later, when plaintiff had nearly completed the agreed water pump installation, the defendant terminated the lease without previous notice and evacuated the premises 13 days later.

Held: (1) That the defendant by his words and conduct made to plaintiff a promise or assurance which was intended to affect the legal relations between them, and to be acted on accordingly, and that plaintiff took him at his word and acted on it to his detriment.

(2) That defendant could not afterwards suddenly go back on his promise without giving plaintiff reasonable notice of his intention so as to give her an opportunity of putting herself right.

(3) That, having regard to the dealings which had taken place between the parties, it would be inequitable to allow defendant to revert to his previous legal relationship as if no representation had been made by him, *i.e.* it would be inequitable to allow him to enforce his contractual rights.

(4) That the defendant did not justifiably terminate the lease, and he was, therefore, liable in damages.

The principle stated in *Central London Property Ltd.* v. *The High Trees House Ltd.* (1947) K.B. 130 followed.

E. Tavernaris for the plaintiff.

Ali Dana for the defendant.

Judgment was delivered by :

JOSEPHIDES, D.J. : The plaintiff, who is a school-mistress, is the owner of a newly constructed house consisting of two flats at Ayios Dometios, Nicosia. At all material times she was serving and residing at Karavas, Kyrenia District.

The defendant is a Squadron-Leader in the R.A.F., stationed at Nicosia. He is married and has a son aged 7.

On the 25th July, 1952, a contract of lease (exhibit 1) was signed by the parties, whereby the plaintiff let to the defendant the first floor flat in the aforesaid house at a monthly rent of £18 for a period of 12 months commencing on the 1st August, 1952. On the 28th August, 1952, the ground-floor flat was occupied for the first time by Flt.-Lt. E. E. James, who is likewise stationed in Nicosia. After that date the defendant complained about the insufficiency of the water supply at first, and later about complete lack of water in the flat, and he eventually terminated the lease and quitted the premises on the 31st October, 1952, *i.e.* 9 months before the date of expiry of the tenancy.

The flat could not be re-let until the 21st April, 1953, and then it was leased at a reduced rent of £16 a month.

The present action was accordingly instituted by the plaintiff on the 8th January, 1953, claiming—

(1) £72 rent from the 1st October, 1952 to the 31st January, 1953; and

(2) alternatively, the same amount as damages or compensation for breach of the contract of lease.

The plaintiff further reserved her rights to claim for rent and/or damages as from the 1st February, 1953 to the 31st July, 1953, when the contract of lease was due to expire.

At the hearing the plaintiff admitted receiving the rent for October, 1952, before the institution of the action, *i.e.* on the 25th October, 1952, by cheque. Her claim is therefore for £54 rent for three months, *i.e.* 1st November, 1952 to 31st January, 1953.

The plaintiff instituted a second action (No. 2207/53) on the 22nd August, 1953, claiming—

(1) £54 rent from the 1st February, 1953 to the 30th April, 1953; and

(2) £6 balance of rent due for the period 1st May, 1953 to 31st July, 1953, during which period the said flat was let at £16 a month instead of £18. In the alternative she claims the same amount by way of damages or compensation for breach of contract of lease.

At the time of the hearing of the present action the pleadings in the second action (No. 3307/53) were not closed and the case was not ready for hearing. It is unfortunate that the parties did not apply to have the two actions con-

solidated. In the result I have before me only the first action for determination.

Several defences were set up in the Statement of Defence but eventually at the hearing they were all abandoned except the defence that the plaintiff (landlord) had failed to provide the defendant (tenant) in accordance with clause 3 (*b*) of the contract of lease (exhibit 1), with a reasonable quantity of water from about the 26th August, 1952 to about the 20th September, 1952, and thereafter with any amount of water whatsoever, until about the 31st October, 1952 (see paragraph 2 (*a*) of the Statement of Defence); and that consequently the plaintiff broke her contract and defendant was entitled to terminate the lease under clause 4 (*d*) of exhibit 1.

Defendant further contended that as a result of the shortage and lack of water he suffered damage and he counter-claimed:

(1) £26.8.0. damages and/or compensation as he and his child had to take their daily bath at the R.A.F. camp, Nicosia, on 66 days, during the material period.

Each trip to the camp cost him 8/- (paras. 8 and 11 (*a*) of the counter-claim);

(2) £16.2.0 damages and/or compensation as owing to the unhealthy and/or insanitary and/or untenantable state of the premises he had to send his wife to a hotel for two weeks in September, 1952 (paras. 9 and 11 (*b*) of the counter-claim);

(3) £30 general damages for inconvenience suffered by the defendant and his family as a result of plaintiff's breach of contract (para. 11 (*c*) of the counter-claim); and

(4) the return of certain electric fittings or fixtures or in the alternative the sum of £9.12.0 being the value thereof (paras. 10 and 11 (*d*) of the counter-claim).

It may be conveniently stated here that the defendant admitted in evidence that he never asked plaintiff to return to him the said electric fixtures and that the plaintiff declared in Court that she was and is ready and willing to let defendant remove and take the aforesaid fixtures. The defendant consequently abandoned this part of his counter-claim.

On the evidence before me I find the following facts: Plaintiff's house consists of two flats. The first floor flat

was let to defendant for a period of one year commencing on the 1st August, 1952, at a rent of £18 a month. The ground floor flat was let and first occupied by Lt. James on the 28th August, 1952. Water was provided to this house from the Kykko monastery water supply. There was running water in the garden of the house throughout the period of occupation by the defendant. There was a tap about 20 yards from the entrance to the flat. There was a water tank in the roof of the house serving both flats but I have no evidence as to its capacity. There was no water pump to pump up water to the roof tank but at the material time, *i.e.* summer of 1952, the water used to go up to the tank by its own pressure at night time only after about 11 p.m. In the previous years Kykko water could go up to first floor tanks by its own pressure and without the use of any pump during day and night; but as the water supply was meantime extended to more houses, in the summer and autumn of 1952 there was not enough pressure in the water in day time to reach the first floor roof-tank with the result that if the water collected in the roof-tank was used up early in the morning, no water could be had again until about 11 p.m.

Defendant's flat has the usual water and sanitary installations, pipes running from the roof-tank to the bathroom, W.C. (flush system) and kitchen; and the defendant had to rely exclusively on the roof-tank for the water supply in his flat. It is true that there was running water in the garden throughout the period that defendant occupied the flat but if there was no water in the roof-tank then water had to be carried up to the flat in buckets.

After inspecting the flat defendant and plaintiff signed a contract of lease (exhibit 1), on the 25th July, 1952, but although the tenancy was due to begin on the 1st August, 1952 the defendant did not go into occupation until the 7th or 8th of August, as there was no water previously in the flat. From the 8th August, 1952, until the 28th August, 1952, when the James's family occupied the ground floor flat there was sufficient water for washing and shaving in the morning and cleaning the floors and just enough for a shower, that is, there was water until about 10 a.m. After that there was no water until about 11 p.m. This went on until 28th August, 1952, but there were one or two cuts in the meantime. The water situation was not very satisfactory during this period but taking into consideration the water supply in Nicosia during summer I should say that this was reasonable in the circumstances.

After the 28th August, the situation became worse. In fact there was no water in the flat after 8 a.m., there was no water in the flush system of the W.C. and defendant could

not do any washing. Defendant's wife had to take her shower every day in the house next door where there was plenty of water from the same water supply. There was never sufficient water for a bath in the flat and defendant's family never had a bath in the flat. Seven or 10 days later the defendant's wife and son, aged 7, went to a leave camp in Troodos where they spent two weeks. On their return the situation was the same. As there was no improvement the defendant saw the plaintiff in about the middle of September, 1952, and suggested to her to erect a ground tank in the garden and instal an electric pump, which the plaintiff accepted. It was further agreed between the parties that the defendant should withhold the rent until this was completed to his satisfaction. In fact, plaintiff paid the September rent on 4.10.52 to the mechanical engineer towards the cost of this installation (see exhibit 5, para. 8, and exhibit 6).

The work of building the tank was commenced on or about the 20th September, 1952. When the work began the water pipes from the main pipe line were cut and sealed and no water went up or was pumped up to the roof tank from the 20th September, until the day when the defendant evacuated the premises, *i.e.* the 31st October, 1952. I do not accept the plaintiff's version that a rubber hose was connected to the water pipes over the weekends nor that any water was taken up or pumped up through that rubber hose.

By the 11th October, 1952, the tank, except for the cover, had been completed. On that day defendant wrote exhibit 5 which he delivered personally on the following day to the plaintiff at Karavas. The plaintiff, after reading that letter with some difficulty, asked defendant not to leave the flat, and defendant admits that if on that day plaintiff had complied with her undertaking to instal the pump and provide him with water he would not have evacuated the premises. But on the 18th October, 1952, he sent a notice (exhibit 2) to the plaintiff terminating the contract and informing her that he would give up possession on the 31st October, 1952. On the 22nd October, 1952, plaintiff replied that she was not prepared to release him from his contract (letter exhibit 3), and on the 25th October, 1952, the defendant replied back enclosing a cheque for £18 for the rent of October, and repeating his complaint about the lack of water (letter exhibit 4). The defendant eventually evacuated the premises on the 31st October, 1952. He admitted in evidence that the water tank with cover was completed and the electric motor pump installed 7 or 8 days before the 31st October, 1952, except for the wire connection. Plaintiff's version (see the evidence of Themistocles, witness No. 2) is that the tank was completed and the motor pump installed and tested on the 17th October, 1952, and that water was pumped up to the roof tank on that day, but I

am not prepared to accept this part of the evidence. I find as a fact that the tank with cover was completed and the electric pump installed, except for the wire connection, some time between the 20th and the 23rd October, 1952.

Now the relevant clauses of the contract of lease (exhibit 1), are the following :—

Clause 3 : " The landlord covenants with the tenant as follows:— ..... (*b*) To provide the tenant at his own expense, with a reasonable quantity of water throughout the term of this contract of lease ".

Clause 4 (*d*): " In the event that the landlord fails to fulfil any of the conditions of the lease, and where this lease specifically provides no other remedy for such failure the tenant so (*sic*) entitled to terminate the lease without previous notice or at his option to take any measures which he may deem necessary to establish the conditions contemplated by this agreement at the entire expense of the landlord ".

On the facts of this case the following questions arise for consideration :—

(1) Did the plaintiff (landlord) provide the defendant (tenant) with a reasonable quantity of water throughout the period of his (defendant's) occupation ?

(2) Did the defendant by his words or conduct make to the plaintiff a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, and did plaintiff take defendant at his word and act on it ?

(3) If yes, did the defendant give the plaintiff reasonable notice so as to enable her to comply with the requirements of the contract ?

(4) Was the defendant, in the circumstances of this case, justified in terminating the contract of lease and evacuating the premises ?

Questions (2) and (3) are not strictly speaking raised in the pleadings but the whole case was fought on that basis and defendant was not in any way taken by surprise. See *Bessie Houry* v. *The Attorney-General* (unreported) Civil Appeal No. 3924 at page 2 of the typed copy of the judgment.

Quasi-estoppel is a well established remedy still governed by the terms in which it was formulated by Lord Chancellor

Cairns in the case of *Hughes* v. *Metropolitan Railway* (1877) 2 Appeal Cases 439 at page 448: "..... It is the first principle upon which all Courts of Equity proceed, that if parties who have entered into definite and distinct terms involving certain legal results—certain penalties or legal forfeiture—afterwards by their own act or with their own consent enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced, or will be kept in suspense, or held in abeyance, the person who otherwise might have enforced those rights will not be allowed to enforce them where it would be inequitable having regard to the dealings which have thus taken place between the parties".

Lord Justice Denning traced this principle back to its origin in the case of Hughes in several of his judgments since the case of *Central London Property Trust Limited* v. *The High Trees House Limited* (1947) K.B. 130. The principle is that where one party has by his words or conduct made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the party who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relationship as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualifications which he himself has so introduced, even though it is not supported in point of law by any consideration, but only by his word". See *Combe* v. *Combe* (1951) 2 K.B. 215.

As to question (1): On the facts before me I have no hesitation in holding that the plaintiff (landlord) failed to provide the defendant (tenant) with a reasonable quantity of water between the 28th August, and the 15th September, 1952; and that she failed to provide him with any water whatsoever from the 15th September to the 31st October, 1952, when defendant left the premises. It is true that there was running water in the garden during the whole period of occupation but I cannot accept the submission of plaintiff's counsel that this was a proper fulfilment of plaintiff's obligation to provide water. I would not expect the tenant to carry up the water in buckets to the first floor. Plaintiff's original obligation under clause 3 (*b*) was to provide a reasonable quantity of water in the roof tank and not in the garden.

As to question (2): Between the 28th August and the 15th September, 1952, defendant had a contractual right against plaintiff for failing to provide him with a reasonable

quantity of water, and under clause 4 (*d*) of the contract o lease he could either—

(*a*) terminate the lease without previous notice, or

(*b*) at his option take any measures which he might deem necessary to establish the conditions contemplated by the agreement at the entire expense of the landlord.

One of the courses defendant could follow under (*b*) was to make arrangements to have water carried in buckets up to the flat. He could employ a man to do this at the entire expense of the landlord.

With full knowledge of his rights the defendant on the 15th September, 1952, elected not to terminate the contract, and he suggested to the plaintiff to construct a ground tank and instal an electric pump, to which the latter agreed, and on the 20th September, 1952, began constructing the tank and installing the pump. The work was completed, except for the wire connection, some time between the 20th and the 23rd October at a cost to the plaintiff of £34 odd, plus the cost of the construction of the tank.

On the facts before the Court I hold that the defendant by his words and conduct made to plaintiff a promise or assurance which was intended to affect the legal relations between them, and to be acted on accordingly, and that plaintiff took him at his word and acted on it to her (plaintiff's) detriment.

It now remains to consider *question* (3), viz. whether defendant has given plaintiff reasonable notice so as to enable her to comply with the requirements of the contract.

The effect of quasi-estoppel can be defined in the following terms: " If a person with a contractual right against another induces that person to believe that he does not intend to enforce it, and that other person prejudices his position with relation to the representor on the faith of the representation, the representor will not be allowed to enforce the right until the other party has been given an opportunity of recovering the position he held before the representation was made ". See an article by J. E. Wilson in 67 Law Quarterly Review, pages 341 and 349; and *Bessie Houry* v. *Attorney-General* (quoted above).

The case of *Panoutsos* v. *Raymond Hadley* (1917) 2 K.B. 473 is an authority for the proposition that where an act has to be done by the buyer of goods, such, for instance,

as the opening of a confirmed banker's credit, and he did not perform that act, and the seller nevertheless went on delivering the goods with knowledge that the act had not been performed, the seller could not suddenly cancel the contract and refuse to make further deliveries without giving the buyer reasonable notice of his intention, so as to give the buyer an opportunity of putting himself right. (*Bird* v. *Hildage* (1948) 1 K.B. at page 95).

Denning, L.J., in *Rickards* v. *Oppenhaim* (1950) 1 K.B. 616 at page 623 said : " If the defendant, as he did, led the plaintiffs to believe that he would not insist on the stipulation as to time, and that, if they carried out the work, he would accept it, and they did it, he could not afterwards set up the stipulation as to the time against them. Whether it be called waiver or forbearance on his part, or an agreed variation or substituted performance, does not matter. It is a kind of estoppel. By his conduct he evinced an intention to affect their legal relations. He made, in effect, a promise not to insist on his strict legal rights. That promise was intended to be acted on, and was in fact acted on. He cannot afterwards go back on it. I think not only that follows from *Panoutsos* v. *Raymond Hadley Corporation of New York*, a decision of this court, but that it was also anticipated in *Bruner* v. *Moore*. It is a particular application of the principle which I endeavoured to state in *Central London Property Trust Ltd.* v. *High Trees House Ltd*".

Now, in the present case, the plaintiff acting on defendant's representations began constructing a tank and installing a pump on the 20th September. By the 11th October when defendant wrote exhibit No. 5 the tank had been completed but not the cover. Although three weeks is not an unduly long time, it cannot be said that plaintiff's workmen worked at a quick pace. Besides, no evidence has been adduced by defendant to show what would be a reasonable time to complete this work.

Be that as it may, defendant wrote his letter (exhibit No. 5) on the 11th October and on the following day, a Sunday, he drove to Karavas where he handed it in person to plaintiff and asked her to read it. Defendant stated in evidence : " It took her a long time to read it and then she asked me not to leave her house. Q. What was her answer ? A. Conversation in English was not so easy but obviously she understood the letter ".

Defendant's allegation in paragraph 7 of exhibit 5, as regards the contamination of the water in the tank is untenable. The tank when completed had a proper cover on top made of brickwork and galvanised metal : the usual type of tank to be found in Nicosia and all over Cyprus;

and the allegation that the water in the tank would become contaminated at the time of the rains is both queer and unacceptable. Besides, it was defendant who had suggested the ground tank and electric pump. He would not now go back on it.

Paragraphs 7 and 8 of the same letter (exhibit 5) are significant. They declare defendant's intention of continuing in occupation of the flat if the plaintiff completed the tank and the installation of the electric pump and paid the electricity bill for running the pump. Plaintiff confirmed this in her evidence in answer to questions by the Court.

Paragraph 9 of exhibit 5 is self-conflicting and in contradiction with the preceding two paragraphs. In any event, on the authorities quoted above, the defendant could not suddenly cancel the contract without giving the plaintiff reasonable notice of his intention, so as to give her an opportunity of putting herself right.

On the 18th October, 1952, viz. 6 days after defendant handed the letter (exhibit 5) to plaintiff, declaring his intention of continuing in occupation on condition that plaintiff completed the new water installation to his satisfaction, he suddenly, and without any notice fixing a time limit (see *Rickards* v. *Oppenhaim* (1950) 1 K.B. at pages 623, 624 and 626), terminated the contract and informed the plaintiff that he would evacuate the premises 13 days later, viz. on the 31st October, 1952, exhibit 2).

At this stage, viz. on the 18th October, 1952, it was too late for the defendant to terminate the contract on the ground that plaintiff had not fulfilled the conditions stated therein (exhibit 2). Long before that date, viz. on or about the 15th September, 1952, he had made his election not to terminate it on that ground. He had led plaintiff to believe that he did not intend to enforce his strict contractual rights and that if she constructed the tank and installed the pump he would accept this. That promise was intended to be acted on and was in fact acted on, *i.e.* plaintiff was still in the course of constructing the tank and installing the pump. Defendant could not afterwards suddenly go back on it without giving plaintiff reasonable notice of his intention, so as to give her an opportunity of putting herself right.

Although the plaintiff had been proceeding at a rather slow pace to complete the installation, it cannot be said that she had not acted on defendant's representation and gone a long way in completing it by the 18th October, in fact she had incurred a considerable expense on this work. No time limit had been set for the completion of the work and, in the absence of any evidence to the contrary, I do not

consider that she had taken an unreasonable time to complete, although she might have completed it earlier. After all, if the plaintiff did not intend completing the work, she would not have spent so much up to then. By this she had evinced her good intention of doing what defendant had asked her to do, although on the other hand defendant was not bound to wait for her indefinitely.

After the defendant had waited until practically the work had been completed then all of a sudden on the 18th October he appears to be in a hurry to cancel the contract without any notice. It was then a matter of a few days, perhaps three or four, but defendant did not choose to wait or give notice to plaintiff to complete the work within a reasonable time, so as to enable her to comply with the requirements of the contract (*Rickard* v. *Oppenhaim*, at page 624).

In these circumstances, and having regard to the dealings which have taken place between the parties, it would be inequitable to allow defendant to revert to his previous legal relationship as if no representation had been made by him, *i.e.* it would be inequitable to allow him to enforce his contractual rights.

Question 1: Consequently, defendant was not justified, in the circumstances of this case, to terminate the contract and quit the premises. He is, therefore, liable to pay damages for the breach of contract, and his counter-claim fails.

Damages: Defendant paid rent from 1.8.52 to 31.10.52 when he evacuated the premises. The premises could not be re-let until the 21st April, 1953, and then they were leased at £16 instead of £18 a month but the claim before me in this action is for the period from 1.11.52 to 31.1.53, viz. three months at £18 a month, *i.e.* £54.

I find that plaintiff has failed partly in her duty to minimize damage. It is true that she entrusted an estate agent with the letting of the premises but I have no evidence before me of any advertisement in the local press. After waiting for a month and not finding a new tenant plaintiff could and should have leased the flat at, say, half the rent, viz. £9 a month to mitigate damage. I accordingly assess the damages as follows:—

(i) Full month's rent for the first month, (November, 1952)	£18.0.0
(ii) Half the monthly rent for the following months (December, 1952 and January, 1953) *i.e.* £9 for two months	£18.0.0
	£36.0.0

I, therefore, fix the damages for the period ending 31st January, 1953, at £36.0.0.

If it were held on appeal that defendant was justified in terminating the contract I would determine his counter-claim as follows :—

(i) *Para.* 11 (*a*): This covers a period of two months and six days, at 8/– a trip a day, viz. £26.8.0. The R.A.F. camp is 4½ miles from plaintiff's flat and the defendant used his own car, an Austin 10 h.p. I do not think that it cost him more than 2/– a trip. In any event, it would not cost him more than 2/– a day to employ a man to carry up water to his flat from the garden. Therefore, I would allow 66 days at 2/– =£6.12.0.

(ii) *Para.* 11 (*b*): Wife's holiday at Troodos £16.2.0. This would be too remote. Defendant could have made arrangements to have water carried up to the flat at the expense of the landlord. See preceding paragraph. I would not assess any damages on this part of the counter-claim.

(iii) *Para.* 11 (*c*): £30 general damages for inconvenience. This would be too remote and, in any event, I do not think that defendant would be entitled to any damages under this head.

(iv) *Para.* 11 (*d*): abandoned.

In the result judgment is entered for plaintiff for £36 with costs, and the counter-claim is dismissed. Costs to be taxed if not agreed by the parties. No witnesses' costs allowed to plaintiff or her witnesses except witness 5.

Judgment accordingly.