

1966
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DEMETRIOS
MICHAEL

v.
HAIG NISHANIAN

[ZEKIA, P., TRIANTAFYLIDES, JOSEPHIDES, JJ.]

DEMETRIOS MICHAEL,

Appellant-Defendant,

v.

HAIG NISHANIAN,

Respondent-Plaintiff.

(Civil Appeal No. 4550).

Landlord and Tenant—Lease—Contract of Lease—For a term of one year and option of renewal, by both parties, for another—Option exercised by both parties—Guarantee clause—Liabilities following the exercise of right of renewal covered by guarantee clause—Guarantor's liability co-extensive with that of the principal.

Contract—Lease—Guarantee clause—See under "Landlord and Tenant" above.

Guarantee—Guarantee clause in contract of lease—See under "Landlord and Tenant" above.

Lease—Contract of lease—See under "Landlord and Tenant" above.

The appellant in this appeal, a guarantor in a contract of lease appealed against the judgment of the District Court whereby he was adjudged to pay the sum of £210 to the plaintiff.

His appeal was mainly based on the ground that the Court wrongly construed the guarantee clause.

The respondent cross-appealed against the order for costs on the ground that the Court in making the said order for costs has, by an oversight and or erroneously excluded the costs of the proceedings up to the 14th June, 1965.

Clause 8 of the contract of lease and the guarantee clause, which are relevant to the determination of the issues involved in the appeal run as follows :

"8. Two months before the termination of the lease each of the contracting parties is entitled to notify the other about the termination of the lease agreement. If not, the obligation continues in force for one year under the above terms".

"The undersigned Mr. Demetrios Michael guarantee jointly with the lessee the exact performance by him of the above terms of the contract, as well as the regular payment of the rent and/or damages in the event of his contravening any term

The Guarantor

(Sgd).....".

The points for consideration were two, namely (a) The construction of clause (8) and (b) of the Guarantee Clause.

Held, (I) on (a) :

Considering the express provision that the period of the lease was for one year, then the construction to be placed on clause 8 could be nothing else than a right of renewal for another year reserved to the parties. So, it appears that, by keeping silence after the expiration of ten months from the date on which the contract was signed, the option for the renewal had been exercised by both parties and the lease was extended for another year.

Held, (II) on (b) :

(1) This clause is so worded in our view, as to render the guarantor's liability co-extensive with that of the principal. It provides expressly that the guarantor undertakes the exact performance of all the terms included in the contract of lease. The right to renew the lease for another year being embodied in the terms of the contract, the liabilities following the exercise of such right are covered by the guarantee clause.

(2) We have carefully studied the contents of the contract of lease in question in the light of the submission of the learned counsel for the appellant and we have come to the conclusion that the guarantee signed by the Appellant (guarantor) covered the liability of the principal (tenant) to pay rents and damages until the latter delivered vacant possession of the premises leased by the landlord, the Respondent. The appeal is, therefore, *dismissed with costs*.

Held, (III) on the cross-appeal :

There was a cross-appeal. It appears that both parties agreed to a variation of the judgment of the lower court which

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variation relates to the sum of £22 as costs adjudged. This figure should be increased to £30. The judgment of the District Court is, therefore, varied accordingly

*Appeal dismissed with costs
By consent, judgment of the
District Court as regards costs
adjudged, varied, accordingly.*

Appeal.

Appeal against the judgment of the District Court of Nicosia (L.M.N. D.J.) dated the 27th October, 1965 (Action No. 2161/64) whereby the defendant was adjudged to pay to the plaintiff the sum of £210 being arrears of rent and *mesne profits* under a contract of lease in which defendant was a guarantor

Char Ioannides, for the appellant.

S Devletian, for the respondent.

The judgment of the Court was delivered by

ZERIA, P. . We shall not call upon the respondent We shall proceed to deliver the judgment

The appellant in this case was a guarantor in a contract of lease which was put in and which is in the file of the case * There is express provision in this contract that the duration of the lease was for a year Clause 8 of the said contract provides that, unless either party to the contract informs the other to the contrary two months prior to the expiration of the lease, the lease shall be deemed to be extended for another year

Considering the express provision that the period of the lease was for one year, then the construction to be placed on clause 8 could be nothing else than a right of renewal for another year reserved to the parties So, it appears that, by keeping silence after the expiration of ten months from the date on which the contract was signed, the option for the renewal had been exercised by both parties and the lease was extended for another year.

Another relevant important clause in this contract is the guarantee clause This clause is so worded in our view, as

* *Note* The material parts of the contract of lease are given at the end of this judgment, *post.* at pages 153-154.

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to render the guarantor's liability co-extensive with that of the principal. It provides expressly that the guarantor undertakes the exact performance of all the terms included in the contract of lease. The right to renew the lease for another year being embodied in the terms of the contract, the liabilities following the exercise of such right are covered by the guarantee clause.

We have carefully studied the contents of the contract of lease in question in the light of the submission of the learned counsel for the appellant and we have come to the conclusion that the guarantee signed by the appellant (guarantor) covered the liability of the principal (tenant) to pay rents and damages until the latter delivered vacant possession of the premises leased by the landlord, the respondent. The appeal is, therefore, *dismissed with costs*.

There was a cross-appeal. It appears that both parties agreed to a variation of the judgment of the lower court which variation relates to the sum of £22 as costs adjudged. This figure should be increased to £30. The judgment of the District Court is, therefore, varied accordingly.

Josipovits, J. Any amount paid by the first defendant (tenant) towards the sum of £22 costs against him shall be credited against the above sum of £30 costs under the judgment of the District Court.

*Appeal dismissed with costs
By consent judgment of the
District Court as regards costs
adjudged varied accordingly*

The material parts of the contract of lease referred to in the above judgment are given below.

'CONTRACT OF LEASE

Owner Mr Haig B Nishanian

Lessee Mr Michalakos Colombos

Leased premises Outbuilding situated at No 187A, Limassol at No 16th June Street

Duration of Lease One year from 14th July, 1962

Price of Lease £12 (twelve pounds) per month

Payment of rent Payable monthly in advance through Ottoman Bank or in cash against receipt

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If at the expiration of the period of lease the lessee fails to vacate and deliver the said premises to the owner he will be bound to compensate the owner £1,000 mils per day in respect of any number of days that might elapse between the termination and the delivery, as well as to pay all Court fees and advocate's fees necessary for ejecting him from the said premises.

.....

Two months before the termination of the lease each of the contracting parties is entitled to notify the other about the termination of the lease agreement. If not, the obligation continues in force for one year under the above terms.

.....

The undersigned Mr. Demetrios Michael guarantees jointly with the lessee the exact performance by him of the above terms of the contract, as well as the regular payment of the rent and/or damages in the event of his contravening any term.

*The guarantor,
(Sgd) Demetrios Michael".*