CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

IN ITS ORIGINAL JURISDICTION AND ON APPEAL FROM THE DISTRICT COURTS.

[TRIANTAFYLLIDES, LOIZOU & HADJIANASTASSIOU JJ.]

1969
Jan. 8
—
DANAI KYRIAKIDOU
v.
ARTIN MANGALDJIAN

DANAI KYRIAKIDOU,

Appellant–Plaintiff,

v.

ARTIN MANGALDJIAN,

Respondent–Defendant.

(*Civil Appeal No.* 4646).

Landlord and Tenant—Contractual tenancy—Contract of guarantee guaranteeing fulfilment by the tenant of his obligations, including payment of the agreed rent under the contract of tenancy till evacuation and delivery of the premises to the landlord—Whether or not contract of guarantee covers the statutory tenancy created by the tenant continuing to remain in possession after expiry of the contractual tenancy under section 23 of the Rent (Control) Law, Cap. 86—Matter of construction of the contract—But strong language needed for saying that the guarantee extends to the statutory tenancy—In the present case, on the true construction of the contract such guarantee, held not to cover the statutory tenancy—Particularly the payment of rent accruing during the period of such statutory tenancy.

Statutory Tenancy—Nature of—Statutory tenancy different from the contractual tenancy whence it sprang—Cfr. The Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, section 15—The Rent (Control) Law, Cap. 86, section 23.

Guarantee—Contract of guarantee in a contract of tenancy—Whether guarantee extends to the ensuing statutory tenancy—See above under Landlord and Tenant.

1969
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—
DANAI
KYRIAKIDOU
v.
ARTIN
MANGALDJIAN

Contract of Guarantee—See above.

Statutory Tenancy—Payment of rent—Whether contract of guarantee in a contract of tenancy continues to cover the payment of rent accruing during the period of statutory tenancy—See above.

Surety—Surety in a contract of tenancy—Whether it extends to the statutory tenancy—See above under Landlord and Tenant.

This is an appeal by the plaintiff-landlord against the judgment of the District Court of Nicosia dated June 17, 1967 dismissing his claim for £132, being arrears of rent, against the guarantor, defendant 2 in the action now respondent in the appeal. The facts are shortly as follows:—

By an agreement in writing dated May 7, 1962, the appellant-plaintiff let to a certain S.B. (defendant 1 in the action but not a party in this appeal) a house at Nicosia for the term of one year ending on May 14, 1963, at a yearly rent of £144, payble by monthly instalments of £12 each, under the guarantee of the respondent (defendant 2 in the action). The material parts of the tenancy agreement are quoted *post* in the judgment of the Court. The terms of the contract of guarantee were as follows: "I guarantee personally and jointly with the tenant the strict and exact performance of the terms of this document (meaning the contract of tenancy) till the evacuation and delivery of the house to the landlord." It is not in dispute that at the expiration on May 14, 1963 of the contractual tenancy, the tenant continued thereafter in possession of the premises as a statutory tenant and that he has failed to pay the total of £132, being arrears of rent at £12 per month as aforesaid for the period of eleven months from March 15, 1965 to February 15, 1966. Hence the action for that sum against the tenant and the guarantor (defendants 1 and 2, respectively). The District Court gave judgment against the tenant but dismissed the claim against the guarantor (now respondent) holding that the said guarantee covered only the period of the contractual tenancy. From this judgment the landlord-plaintiff now appeals. The short question involved in this appeal is whether or not the District Court was right in its conclusion that the contract of guarantee did not cover the statutory tenancy.

In affirming the judgment of the District Court and dismissing the appeal with costs, the Court—

Held, (per Hadjianastassiou J., Triantafyllides and Loizou JJ. concurring):

(1) The contract of guarantee begins with the words "I guarantee.....the strict and exact performance of the terms of this document....." In construing it, therefore, we have to look what was provided in the agreement of tenancy of the 7th May, 1962 and what obligations, *inter alia,* arose on the part of the tenant; he was to remain in possession of the premises for the term of one year and pay the rent by equal monthly instalments in advance; he was to yield up the premises at the end of the tenancy; he was to pay for any damage or injury caused to the premises; and he was not to assign or sublet the premises without the consent of the landlord. In my opinion in construing the contract as a whole it becomes clear that these were the obligations and the terms the strict and exact performance of which the surety undertook to guarantee.

(2) Having considered the authorities and the wording of the contract of guarantee as well as that of the tenancy agreement, I have reached the conclusion that the guarantee in the present case would not apply to the statutory tenancy. In my view, the statutory tenancy under the provisions of section 23 of the Rent (Control) Law, Cap. 86 (as well as under the provisions of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920, in England), is a different tenancy from the contractual tenancy whence it sprang so that the guarantor of the rent under the contractual terms is not liable for rent accruing during the statutory tenancy.

(3) It is, of course, conceivable in a case where strong and clear language has been used in a contract of guarantee that such guarantee would also apply to the payment of rent in the ensuing statutory tenancy. However, in view of the different character of the statutory tenancy—as distinct from the contractual tenancy—particularly its indefinite duration, I am of the opinion that the language in the contract of guarantee in this case is not so clearly worded as to warrant a finding that the parties intended it to extend to the statutory tenancy and that the guarantor undertook to bind himself until delivery of the premises in question including the period the tenant was holding over as a statutory tenant.

Appeal dismissed with costs.

Cases referred to:

Panayiotis Metochis v. *Yiannis Schizas*, 19 C.L.R. 149, *followed;*

Jackson v. *Hayes*, 1939 Ir. Jur. Rep. 59 H.C.;

Jordan v. *McArdle* (1940) 44 Ir. L.T.R. 31, Cir.;

Boyer v. *Warbey* [1953] 1 Q.B. 234.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (HjiConstantinou Ag. D.J.) dated the 17th June 1967 (Action No. 515/1966) whereby his claim for arrears of rent was dismissed.

L. Clerides, for the appellant.

N. Pelides, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES, J.: I shall ask Mr. Justice Hadjianastassiou to deliver the first judgment.

HADJIANASTASSIOU, J.: This is an appeal from the judgment of the District Court of Nicosia dated June 17, 1967, dismissing the claim of the appellant-plaintiff for the sum of £132, arrears of rent against the respondent-defendant.

The undisputed facts are in brief as follows:-

By an agreement dated May 7, 1962, the appellant let to defendant 1, in the Court below, Samuel Bezirdjian, a house situate at No. 14, Artemidou Street, Nicosia. The agreement provided that the defendant was to be a tenant for the term of one year as from May 15, 1962, till May 14, 1963, at a yearly rent of £144, payable by monthly instalments in advance, under the guarantee of the respondent-defendant. The agreement in so far as relevant, reads as follows in Greek:

«Ὁ Ἐνοικιαστὴς συνεφώνησε τὰ ἀκόλουθα:-

.....

«2(θ) Εἰς τὸ τέλος τῆς περιόδου ἐνοικιάσεως νὰ παραδώσῃ τὸ ἐν λόγῳ κτῆμα εἰς τὸν Ἰδιοκτήτην, εἰς οἵαν καλὴν κατάστασιν

ἀναγνωρίζει διὰ τοῦ παρόντος ὅτι τὸ παρέλαβε, εὐθυνόμενος δι' οἱανδήποτε τυχὸν βλάβην ἢ ζημίαν τὴν ὁποίαν ἤθελεν ὑποστῆ τὸ κτῆμα.....»

The tenant agreed as follows:—

.....

(a) To yield up the said premises to the landlord on determination of the tenancy, in the same good condition as he hereby acknowledges they were when he took delivery of them, being liable for any damage or injury which might have been caused to the premises.

.....

"Ὁ Ἰδιοκτήτης συνεφώνησε:

.....

4. Νοουμένου πάντοτε ὅτι ἐὰν καὶ ὅταν τὸ ἐν λόγῳ ἐνοίκιον ἢ μέρος τούτου μένει ἀπλήρωτον διὰ περίοδον εἰκοσιμιᾶς ἡμερῶν μετὰ τὴν ἡμέραν καθ' ἣν τοῦτο καθίσταται πληρωτέον (εἴτε ἀπαιτηθῆ νομικῶς εἴτε μὴ) ἢ ἐὰν καὶ ὅταν ὁ ἐνοικιαστὴς παραβῆ οἱονδήποτε τῶν ὅρων καὶ ὑποχρεώσεων τῶν περιεχομένων εἰς τὸ παρὸν ἔγγραφον τότε καὶ ἐν τοιαύτῃ περιπτώσει θὰ εἶναι νόμιμον διὰ τὸν Ἰδιοκτήτην ἀμέσως μετὰ ταῦτα νὰ ἐπέμβῃ εἰς τὸ κτῆμα νὰ ἀναλάβῃ κατοχὴν τούτου καὶ νὰ ἀπολαμβάνῃ τοῦτο καθὼς πρὸ τῆς ἐνοικιάσεως ἡ δὲ παροῦσα συμφωνία θὰ θεωρῆται ὡς ἔχουσα τερματισθῆ ἄνευ ἐπηρεασμοῦ τῶν δικαιωμάτων τοῦ Ἰδιοκτήτου δι' ἀποζημιώσεις ἐν σχέσει μὲ τὴν τοιαύτην παράβασιν ὑπὸ τοῦ ἐνοικιαστοῦ ὡς ἀνωτέρῳ ἢ δι' οἱανδήποτε καθυστέρησιν τοῦ ἐνοικίου».

The landlord agreed:

.....

Clause 4:

"Provided always that if and when the said rent or part thereof remains in arrear for a period of 21 days after the date when it became due and payable (whether formally demanded or not) or if and when the tenant is in breach of any of the terms and conditions embodied in this agree-

ment then and in such a case it would be lawful for the landlord immediately thereafter to enter on the premises and to take possession thereof and to enjoy same as he was doing before the letting of the premises and the present agreement shall be considered as having been terminated without prejudice to the rights of the landlord to claim damages regarding such breach as above or any arrears of rent".

The terms of the contract of guarantee are of importance and are as follows in Greek:

«Ἐγγυῶμαι προσωπικῶς καὶ ἀλληλεγγύως μετὰ τοῦ ἐνοικιαστοῦ τὴν ἀκριβῆ καὶ πιστὴν τήρησιν τῶν ὅρων τοῦ παρόντος ἐγγράφου, μέχρι τῆς ἐκκενώσεως καὶ παραδόσεως τῆς οἰκίας εἰς τὸν ἰδιοκτήτην».

"*Guarantor*

"I guarantee personally and jointly with the tenant the strict and exact performance of the terms of this document till the evacuation and delivery of the house to the landlord".

It is not in dispute that at the expiration of the contract of tenancy, the tenant continued in possession of the premises after May 15, 1963, as a statutory tenant. It is common ground that the tenant, who is not a party to this appeal, has failed to pay the total amount of £132, arrears of rent, at £12 per month, for a period of eleven months as from March 15, 1965, till February 15, 1966; and on November 11, 1966 judgment was issued in favour of the plaintiff–appellant for the sum of £132 with £16,500 mils costs, against defendant 1, in default of appearance.

The short question between the parties in this appeal, is whether the contract of guarantee continued to cover the statutory tenancy as counsel for the appellant maintains, or whether as counsel for the respondent contended, the contract of guarantee remained in force only for the period when the tenant continued in occupation as a contractual tenant–viz., up to May 14, 1963, after which date the surety was not responsible for the rent.

The learned trial judge in rejecting the submission of counsel for the appellant that the Court ought to have distinguished

and not followed the case of *Panayiotis Metochis* v. *Yiannis X. Schizas* 19 C.L.R. 149, because of the difference of the wording in the present guarantee clause viz., "till evacuation and delivery of the house to the landlord", had this to say in his judgment.

"Having carefully considered the above submission of the learned counsel for the plaintiff, I find myself unable to agree. I think that the phrase 'till evacuation and delivery of the house to the landlord' cannot in any way extend the tenant's obligation which was guaranteed, to deliver vacant possession, his such obligation being at the expiration of the period of tenancy i.e. on the 15.5.63. Moreover the tenant's obligation to deliver vacant possession is strengthened by the provisions in Clause 2(θ) of the contract of lease.

"I failed to see how can such a clause in the contract of guarantee embodied in the contract of lease extends the guarantor's liability to cover a period when the contract of lease itself will not be in force. In this respect it must not be overlooked that a contract of guarantee, as defined by section 84 of Cap. 149 is only a contract to perform the promise, or discharge the liability of a third person in case of his default. The tenant's promise or obligation in this case was that he would be paying regularly the rent and to deliver vacant possession on the 15.5.63. It was for this promise or obligation of the tenant that the guarantor is liable to answer in case of default.

I may add here that if the submission of the learned counsel for the plaintiff was to be accepted, this would in effect mean that the defendant 2 should be held liable indefinitely and so long as the tenant holds over possession irrespective of any renewals or even entirely new contracts of lease have been signed afterwards by the landlord and tenant. I do not think that I should comment on such a proposition which cannot be supported on any legal grounds".

I had occasion to call for the file of the record of *Metochi's* case and I have examined the contract of lease. Paras. 6 and 7 read as follows in Greek:

«6. Ἐὰν ὁ ἐνοικιαστὴς κατὰ τὴν λῆξιν τῆς περιόδου τῆς ἐνοικιάσεως δὲν ἤθελεν ἐκκενώσει καὶ παραδώσει τὸ ἐν λόγῳ

κτῆμα εἰς τὸν ἰδιοκτήτην θὰ ὑποχρεοῦται ν' ἀποζημιώνῃ τὸν ἰδιοκτήτην πρὸς ἑπτὰ (ἀρ. 7) σελίνια δι' ἑκάστην ἡμέραν ὅσαι ἤθελον παρέλθει ἀπὸ τῆς λήξεως μέχρι τῆς παραδόσεως ὡς καὶ εἰς πάντα τὰ δικαστικὰ ἔξοδα ἅτινα ἀπαιτοῦνται διὰ τὴν ἔξωσίν του ἐκ τοῦ ἐν λόγῳ κτήματος.

7. Ἡ καθυστέρησις τῆς τακτικῆς πληρωμῆς τοῦ ἐνοικίου, κατὰ τὰς ὡς ἄνωθι ὁρισθείσας προθεσμίας παρέχει τὸ δικαίωμα εἰς τὸν ἰδιοκτήτην νὰ κηρύξῃ διαλελυμένον τὸ παρὸν συμβόλαιον, ὁ δὲ ἐνοικιαστὴς ὑποχρεοῦται εἰς τὴν πληρωμὴν παντὸς δεδουλευμένου ἐνοικίου μέχρι τῆς ἡμέρας τῆς εἰς τὸν ἰδιοκτήτην παραδόσεως τοῦ κτήματος συμφώνως πρὸς τὰς προνοίας τοῦ παρόντος συμβολαίου».

"6. If the tenant at the expiration of the period of lease would not evacuate and deliver the said premises to the landlord he would be bound to compensate the landlord at 7 shillings per day from the time of the expiration until the time of delivery, as well as all Court expenses required for his ejectment from the said premises.

7. Delay in the regular payment of rent, within the time limits fixed above gives the right to the landlord to declare the present contract as cancelled, and the tenant is bound to pay all rent accrued and due until the day of the delivery of the premises to the landlord, in accordance with the terms of this contract".

The contract of guarantee reads:—

«Ὁ ὑποφαινόμενος.....ἐκ.....ἐγγυῶμαι ἀλληλεγγύως μετὰ τοῦ ἐνοικιαστοῦ τὴν τακτικὴν πληρωμὴν τοῦ ἐνοικίου καὶ τὴν ὑπ' αὐτοῦ ἐκπλήρωσιν τῶν ὡς ἄνωθι ὅρων τοῦ συμβολαίου».

"I the undersigned.....of.....jointly guarantee with the tenant the regular payment of the rent and the fulfilment by him of the above-mentioned terms of the contract".

Hallinan C.J., of the then Supreme Court of Cyprus, delivering the judgment of the Court in the case of *Metochis*, (*supra*) had this to say:

"The respondent, as a landlord, had entered into a contract of lease with the first defendant who is not a party

to the appeal for a lease of one year and, in the absence of any other agreement, for another year from the 12th March, 1947, and this express contractual tenancy terminated on the 12th March, 1949. The rent was for £5 a month. The first defendant continued in occupation until the following September as a statutory tenant at the same rent. He only paid £1 in June and therefore for the six months from March to September there was an amount of £29 due. The appellant was the guarantor of the first defendant, the tenant, as regards the contract of lease. He guaranteed regular payments of the rent and fulfilment by the tenant of the terms contained in the contract.

The short point for decision in this case is whether the contract for guarantee covered the statutory tenancy. The learned trial Judge appears to have accepted the submission of the respondent's counsel made on this appeal that this statutory tenancy was a mere continuation of the contractual tenancy and that the guarantor when he made this agreement or guarantee knew that the Rent Restriction Law (Cap. 108) was in force and probably the tenant would continue on in possession after the expiration of the contractual tenancy and therefore he impliedly agreed that the contract and guarantee should continue during the statutory tenancy.

We are unable to accept the submission of counsel for the respondent that the contract of guarantee continued and applied to the statutory tenancy. It is quite clear that such guarantee would not apply to a statutory tenancy under the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. In the commentary on section 15 of that Act contained in Megary Rent Acts (6th Edition, page 165) the learned author states:

> 'Again the statutory tenancy is a different tenancy from the contractual tenancy whence it sprang, so that a guarantor of the rent under the contractual term is not liable for rent accruing during the statutory tenancy'.

Two Irish cases are cited in respect of that proposition.

Counsel for the respondent has sought to distinguish the provisions of section 15 of the English Act from section 8(3) of the Cyprus Chapter 108. He argued that in England

a statutory tenancy is nothing more than right of occupation which incorporates such terms of the contractual tenancy as are not inconsistent with the Acts relating to rent restriction; whereas in Cyprus the original contractual relations between the landlord and tenant continue under the statutory tenancy. We are unable to accept this submission. It is clear from the wording of section 8(3) of our law that the legislative authority merely intended to confer a right of occupation on the tenant who becomes statutory tenant and he is, as in England, obliged to observe the conditions and is entitled to the rights under the original contract of tenancy in so far as they may be applicable; subject to the provisions of this law, as in England, the statutory tenancy is a different tenancy from the contractual tenancy.

In our opinion, a statutory tenancy which arose after the 12th March, 1949, was a different tenancy and the contract of guarantee did not apply thereto. For these reasons we consider that the learned trial Judge was wrong in holding that the appellant was liable for the arrears of rent accrued during the period of statutory tenancy".

As I had been able to trace the two Irish cases referred to in Metochis case, *supra*, I propose dealing first with the case of *Jackson* v. *Hayes* 1939 Ir. Jur. Rep. 59, H.C.

Johnston, J., delivering the first Judgment of the Court had this to say:

"This is an action brought by Robert Devonshire Jackson of St. Heliers, Jersey, against Denis Hayes of Limerick to recover a sum of £135 odd, arising as is alleged out of a guarantee that was entered into between the defendant Hayes and the landlord, guaranteeing the amount of rent and other matters payable in respect and arising out of a tenancy agreement dated September 12, 1930, between the landlord and one, William McDermott of Limerick. The claim in respect of this £135 is made up of four items consisting of an item of £7.4s.2d. for arrears of rent, and £26.0s.6d. the amount alleged to be due by the tenant in respect of certain repairs that the plaintiff had to carry out on the premises. The remaining part of the claim is in respect of mesne rates by reason of the tenant holding on after the tenancy ceased.

The agreement of 1930 witnessed that the landlord agreed to let and William McDermott agreed to take as a monthly tenancy from September, 12, 1930, at the rent of £5 per month payable on the 12th day of each month, first payment to be made on October 12, 1930 all that the upper part of the house No. 3 William Street in the City of Limerick together with the right to use the cellar subject to the rights of W.F. Pike therein. It was provided by the agreement that certain obligations arose on the part of the tenant; he was to pay the rent in accordance with the terms of the agreement; he was to keep the internal portion of the premises in good order, repair and condition, and so yield up the premises on determination of the tenancy; he was not to assign or sub–let the whole or any part of the premises without the consent in writing of the landlord; he was to use the premises for the purpose of carrying on therein the business of a hairdresser only and not for the purpose of a dwelling–house, and to pay the costs of an incidental to the preparation and completion of the agreement. There were certain obligations placed on the landlord, which do not arise on the case.

The terms of the contract of guarantee are of importance, and I think I ought to read them in full: 'Stamps 6d. In consideration of your letting the premises described in annexed Agreement to William McDermott We and each of us for ourselves our executors and administrators guarantee the punctual payment of the rent and the due performance by the said William McDermott of the stipulations and agreements on his part therein contained and further that should the said William McDermott make any default in payment of the said rent or any other stipulations on his part we and each of us undertake and agree to be responsible for the payment of the said rent and performance of said stipulations and agreements and we undertake and agree to indemnify the said Robert Devonshire Jackson his executors administrators and assigns against all loss costs claims and demands whatsoever arising from any default on the part of said William McDermott or failure on his part to perform the terms of the said Agreement. Dated this 12th day of September 1930'. Signed by Denis Hayes and by John McDermott and attested.

I think that default has been made by the tenant in

respect of two matters for which the guarantor is liable. He has failed to pay the rent amounting to £7.4s.2d; and he has put the landlord to the expense in respect of repairs of £26.0s.6d; and in my opinion there ought to be a decree against the guarantor for those sums. Personally I do not think that the other two claims arise under the contract of tenancy as indemnified by the guarantee. Mr. Esmonde has made a gallant effort to make a claim for mesne rates, but I don't think he has succeeded.

There is nothing in the Rent Restrictions Act that interferes with the contractual right of outside parties in respect of such matters as guarantees; and I don't see why the landlord should not get the benefit of this contract of guarantee to the extent that he is entitled to under the construction of the contract itself. He is entitled in the words of the contract to be idemnified when the tenant does not pay the rent in accordance with the terms thereof and where the tenant does not keep the term regarding repairs. Under the contract, therefore, I think that the guarantee is good to the extent of saving the landlord the loss incurred in any of these two items; but I think it would be unfair to burden the guarantor with the loss consequent to the other claims. In the circumstances there ought to be a decree for £7.4s.2d. and £26.0s.6d".

The principle adopted in this case viz., that the Guarantor was liable to the landlord for the amount of the rent accrued down to the determination of the tenant's interest by a notice to quit, but, was not liable for either the mesne rates accruing after the expiration of the tenancy or the cost of the ejectment proceedings against the tenant, was adopted and followed in the case of *Jordan* v. *McArdle* (1940) 44 Ir. L.T.R. 31, Cir.

The facts in this case are briefly as follows:—

"By an agreement made 12th day of October 1937, Patrick Jordan let premises to William McArdle, whose father, Arthur Andrew McArdle, became surety for the rent of the premises. The tenant fell into arrears with the payments of rent and on 9th June, 1938, there being seventeen weeks' rent due and unpaid, notice to quit was served on William McArdle. An ejectment civil bill was also served in the same month. The tenant then paid the arrears of rent, being £17.–together with £1.17s.6d., costs of civil

bill, and proceedings were discontinued. The tenant remained on in the premises under the same terms as formerly. Payments of rent fell into arrears again. On the 29th day of October, 1938, there being again seventeen weeks' rent due and unpaid, notice to quit was served. On the 21st day of December, 1938, an order for possession of the premises was made in the Dublin Circuit Court and for the payment of the arrears of rent. On the 31st day of January, 1939, this order was lodged with the Sheriff for execution against William McArdle. Patrick Jordan now sued Arthur Andrew McArdle for the amount of the rent due, being £17, together with costs of the ejectment and execution order, being £12.7s.6d., and the Sheriff's fee of £3.8s.0d., making a total of £32.15s.6d.".

Shannon Judge had this to say in his judgment:

"The issue in this case is—is the tenancy under which the rent became due the same tenancy as that in respect of which the guarantee was given, or is it a different tenancy created after the expiration of the notice to quit in June, 1938? If it is the same tenancy as that referred to in the guarantee the defendant is liable to pay the amount sued for, and if it is a different tenancy he is not liable.

The defendant submits that if a landlord serves a notice to quit and the landlord and tenant allow the appropriate time mentioned therein to expire, then as between the landlord and a person who has guaranteed the payment of the rent during the tenancy to which the notice refers, this tenancy has come to an end at the expiration of the notice, and cannot be continued by the landlord and tenant agreeing that the tenant shall remain in possession under the same terms and conditions as existed prior to the service of notice. In reply to this the plaintiff relies on the decision in *Hartell* v. *Blackler* [1920] 2 K.B. 161 which certainly decides that a landlord and tenant may after expiration of a notice to quit recognise the former tenancy and waive the notice to quit. I find however, that this decision has been clearly dissented from by Lush, J, and Sherman J, in *Davies* v. *Bristow* [1920] 3 K.B. 428, and it is also in conflict with *Hunt* v. *Bliss* (1919) W.R. 331. The judgments in these last mentioned three cases appear to me to make it clear that *Hartell* v. *Blackler* should not be followed by me. That a notice to quit may by agreement be with-

drawn during its currency so as not to alter the tenancy as between a landlord and tenant is clear from the decision in *Inchiquin* v. *Lyons*, 20 L.R. Ir. 474, and *Boyd* v. *Phelan*, 14 L.R. Ir. 232, but an agreement between landlord and tenant to disregard a notice to quit during its currency may in certain circumstances release a surety for the rent. See *Tayleur* v. *Wildin* (1868) L.R. 3 Exch. 303. For these reasons I think the tenancy in respect of which the defendant guaranteed the rent ceased on the expiration of notice to quit, and consequently the defendant is not liable for the rent accrued due since then. The action must be dismissed with costs".

It would be observed that the contract of guarantee in the present case is differently worded compared to *Metochis*, *Jackson* and *Jordan's* cases. Although the contract of guarantee is an independent contract, nevertheless one has to bear in mind, however, that the said contract begins with the words "I guarantee personally and jointly with the tenant the strict and exact performance of the terms of this document....." and in construing it, we have to look what was provided in the agreement of May 7, 1962, and what obligations, *inter alia*, arose on the part of the tenant; he was to remain in possession of the premises for the term of one year and pay the rent by monthly instalments in advance; he was to yield up the premises at the end of the period of the tenancy; he was to pay for any damage or injury caused to the premises; and he was not to assign or sublet the whole or any part of the premises without the consent of the landlord. Then we have clause 4 which places certain obligations on the landlord. In my opinion in construing the contract as a whole it becomes clear that these were the obligations and the terms the strict and exact performance of which the surety undertook to guarantee.

Having considered carefully the authorities, as well as the contentions of both counsel and having addressed my mind that the contract of guarantee is differently worded, I have reached the conclusion that the guarantee would not apply to a statutory tenancy under the provisions of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, in England; and certainly would not apply to section 23 of our Rent (Control) Law Cap. 86. In my view, the statutory tenancy is a different tenancy from the contractual tenancy whence it sprang so that the guarantor of the rent under the contractual

terms is not liable for rent accruing during the statutory tenancy. It is clear from the wording of our law that the legislating authority merely intended to confirm a right of occupation on the tenant who becomes statutory tenant and he is, as in England obliged to observe the conditions and is entitled to the rights under the original contract of tenancy in so far as they may be applicable.

Evershed M.R. in *Boyer* v. *Warbey* [1953] 1 Q.B. 234, dealing with the character of the statutory tenancy has this to say:

> "The character of the statutory tenancy I have already said, is a very special one. It has earned many epithets, including '*monstrum horrendum*' and, perhaps, it has never been fully thought out by Parliament. It is clear, however, that purely personal covenants cannot persist into a statutory tenancy, for *ex concessis* the contract is finished (though, of course, the contracting party may still be sued as such). It is also clear that covenants to deliver up possession are inconsistent with a statutory tenancy....."

Since there is nothing in the Rent (Control) Law that interferes with the contractual rights of outside parties in respect of matters like guarantees, I would be prepared to express the view, that it is conceivable in a case where strong and clear language has been used in a guarantee, that the Court would be ready to reach a conclusion that the guarantee would also apply to the payment of rent in a statutory tenancy. However, in view of the different character of the statutory tenancy,—as distinct from the contractual tenancy—particularly its indefinite duration, I am of the opinion, that the language in this contract of guarantee is not so clearly worded as to warrant a finding that the parties intended it to extend to the statutory tenancy and that the guarantor undertook to bind himself until the delivery of the premises in question including the period the tenant was so holding over as a statutory tenant.

Counsel for the appellant, further contended that it was within the contemplation of the parties that the guarantee was a continuous guarantee guaranteeing the rent accruing even during the statutory tenancy. I am unable to accept the submission of counsel that the contract of guarantee continued and applied to the statutory tenancy. In my view, a continu-

ing guarantee is one which extends to a series of transactions and is not exhausted by nor confined to a single credit or transaction. Of course, whether in a particular case a guarantee is continuing or not is a question of the intention of the parties, as expressed by the language they have employed, understanding it fairly in the sense in which it is used; and this intention is best ascertained by looking to the relative position of the parties at the time the instrument is written. In the case in hand, the language employed in the contract of guarantee viewed in the light of clauses 2(θ) and 4 of the contract of tenancy, in my opinion, shows that the parties did not intend and/or contemplate when the guarantee was given, that it would be a continuing guarantee.

For the reasons I have endeavoured to advance, I am of the opinion, that the learned trial Judge was justified in the view of the case and in the conclusion at which he arrived viz., that the guarantor was not liable for the tenant's failure to pay the rent during the statutory tenancy.

I would, therefore, affirm the judgment appealed from and dismiss the appeal with costs.

TRIANTAFYLLIDES, J.: I agree with the conclusion reached by my brother Mr. Justice Hadjianastassiou in this case, and I also endorse the basic reasons which have led him to such conclusion.

LOIZOU, J.: I also agree with the result and there is nothing that I wish to add.

TRIANTAFYLLIDES, J.: In the result this appeal fails and has to be dismissed with costs.

Appeal dismissed with costs.