

[HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

ANDREAS YERASIMOU,

*Appellant - Defendant,*

v.

ANDREAS ROUSOUDHIOU,

*Respondent - Plaintiff.*

(Civil Appeal No. 5268).

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*Landlord and Tenant—Statutory tenancy—Business premises—Recovery of possession—Intention to demolish and reconstruct premises—But landlord obtained only permit for demolition but no permit for reconstruction—Requirements of section 10(1)(h) of the Rent Control (Business Premises) Law, 1961 (Law 17/1961) not satisfied—Consequently, the trial Court erroneously issued order for possession—Order for recovery of possession set aside on appeal.*

*Rent Control—Business premises—Recovery of possession etc.—See supra.*

*Statutory Tenancy—Business premises—Demolition and reconstruction thereof—Permit obtained only for demolition—Requirements of section 10(1)(h) of aforesaid Law 17/1961 not satisfied—Order for ejectment reversed on appeal—Cf. further supra.*

The respondent (plaintiff in the action) is the owner of a shop at Larnaca, the appellant (defendant) being at all material times the statutory tenant of the said shop constituting admittedly 'business premises' within the Rent Control (Business Premises) Law, 1961 (Law 17/1961). In July, 1972, the owner-landlord gave to the tenant a three months' notice in writing to vacate the aforesaid premises because they were reasonably required by him for the substantial alteration and/or reconstruction and/or demolition of same. The landlord obtained in time from the appropriate authority a permit only for the demolition of the premises in question. The tenant did not comply with the said notice and continued to remain in possession of the premises; and the landlord brought an action in the District Court of

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Larnaca against the tenant (now appellant) for an order of possession. The trial Court found that the landlord (plaintiff, now respondent) truly intended to demolish the premises for the purposes of erecting new premises intended for his own use. The trial Court was further satisfied that once the landlord had obtained the necessary permit for the demolition of the premises and that he had given to the tenant the required three months' notice in writing as provided by section 10(1)(h) of the said Law 17/1961, he was entitled to the relief claimed *i.e.* an order for the recovery of possession of the business premises in question. It is against this judgment that the tenant (defendant) took this appeal on the main ground that in the absence of a permit to reconstruct, the trial Court had no power (or jurisdiction) to grant an order for the recovery of possession of the said shop. The Supreme Court subscribing to this argument allowed the appeal and set aside the order appealed from.

Section 10(1)(h) of the Rent Control (Business Premises) Law, 1961 (Law 17/1961) provides .

“10(1) No judgment or order for the recovery of possession of any business premises, to which this law applies, ..... shall be given or made except in the following cases :

(a) (b) etc.

(h) Where the business premises are reasonably required by the landlord for the substantial alteration or reconstruction thereof in such a way as to affect the business premises or for the demolition thereof, and the Court is satisfied that the landlord has, where necessary, obtained the necessary permit for such alteration, reconstruction or demolition and he has given to the tenant not less than three months' notice in writing to vacate the business premises.”

Allowing the appeal and setting aside the order for possession appealed from, the Supreme Court :-

Held, (1) Looking at the terms of section 10(1)(h) (*supra*) we are of the view that if any one of those grounds is established the landlord's claim for possession must succeed provided the Court is

satisfied that the landlord obtained the necessary permit from the appropriate authority, because each ground is entirely separate and independent, and which if proved, entitles the landlord to succeed (see *Fisher v. Taylor Furnishing Stores Ltd.* [1956] 2 All E.R. 78. at p. 84, per Parker L.J.

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- (2) Consequently, the learned trial judge misdirected himself in granting an order of ejectment against the tenant (*defendant-appellant*) because it is clear from the facts found by him that the landlord (*plaintiff-respondent*) required the business premises in question for the demolition and reconstruction of same; and once the latter has failed to obtain also the necessary permit for reconstruction of the premises, the trial judge was wrong in holding that the landlord brought himself within the provisions of section 10(1)(h) of the statute (*supra*).
- (3) We would, therefore, reverse the judgment of the trial judge and allow this appeal on this short question of construction.

*Appeal allowed with costs.*

Cases referred to :

*Fisher v. Taylors Furnishing Stores Ltd.* [1956] 2 All E.R. 78, at p. 84, per Parker L.J.;

*Betty's Cafés Ltd. v. Phillips Furnishing Stores Ltd.* [1958] 1 All E.R. 607, at p. 619 H.L.;

*Little Park Service Station Ltd. v. Regent Oil Co. Ltd.* [1967] 2 All E.R. 257;

*Housleys Ltd. v. Bloomer-Holt Ltd.* [1966] 2 All E.R. 966, at p. 968;

*Chandler v. Strevett* [1947] 1 All E.R. 164, per Bucknill, L.J.

#### **Appeal.**

Appeal by defendant against the judgment of the District Court of Larnaca (Orphanides, S.D.J.) dated the 13th December, 1973, (Action No. 828/72) whereby he was

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ordered to deliver vacant possession of a shop, situated at 134 Zenonos Kitieos Street, Larnaca, to the landlord.

*C. Varda (Mrs.)*, for the appellant.

*M. Kramvis*, for the respondent.

*Cur. adv. vult.*

The judgment of the Court was delivered by :-

HADJIANASTASSIOU, J. : In this case the appellant appeals against the judgment of the District Court of Larnaca dated December 13, 1973, ordering the tenant to deliver vacant possession of a shop situated at 134, Zenonos Kitieos Street, to the landlord because the latter reasonably requires the said business premises for demolition for the purpose of erecting new premises.

The facts as found by the trial judge are these :-

The respondent acquired the premises in 1967 by purchase when the appellant was already in possession of the shop in question since 1964 and in 1969 a written contract was entered into between the tenant and the landlord for a period of one year as from September 10, 1969, until September 9, 1970, at a monthly rent of £7. After the expiration of the said period, a notice was given by the landlord to the tenant to vacate the shop in question, and because the tenant refused to vacate the premises after the expiration or determination of his tenancy, he continued to remain in possession of the business premises as a statutory tenant. It appears that the landlord is the owner of another three adjoining shops and has applied to the Municipality of Larnaca to demolish all four shops including the one in the possession of the tenant for the purpose of reconstruction. On July 1, 1972, the Municipality of Larnaca issued a permit to the landlord for the purpose of demolishing the premises in question. The landlord in paragraph 3 of the statement of claim alleged that on July 8, 1972, gave notice to the tenant that the business premises held by him as a statutory tenant were reasonably required by him for the substantial alteration and/or reconstruction in such a way as to affect the business premises and/or for the demolition of same and that he received the relevant licence No. 148/72 dated July 1, 1972; and that he

has given the tenant 3 months notice in writing to vacate the premises. The tenant has alleged in paragraph 3 of the defence that the landlord was not entitled to an order of recovery of possession of the business premises, because he claimed that he was a statutory tenant protected by the relevant law.

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The trial Court, after hearing evidence, found that from the evidence before it, it was satisfied that the landlord truly intended to demolish his premises as soon as he recovers possession of the premises in question, for the purpose of erecting new premises which are intended for his own use. It was further satisfied that once the landlord had obtained the necessary permit for the demolition of the premises and that he had given to the tenant the required 3 months' notice in writing as provided by section 10(1)(h) of Law 17/61, he was of the view that the landlord proved that under the requirements laid down by the said law he was entitled to the relief claimed, *i.e.* an order for the recovery of possession of the business premises in question, and other consequential relief.

The question for decision in this appeal is whether under s. 10(1) of Law 17/61, the landlord was entitled to the order of recovery of possession of the business premises. There is no doubt that the purpose of Law 17/61 was to give a greater degree of protection to tenants of business premises from eviction than they formerly had, and for matters connected therewith and incidental thereto. S. 10(1) is to be found in part 4 of the said law under the heading "Recovery of Possession" and is in these terms :-

"No judgment or order for the recovery of possession of any business premises, to which this Law applies, or for the ejectment of a tenant therefrom, shall be given or made except in the following cases".

And under (h)—which counsel agreed is the relevant paragraph—we read :-

"Where the business premises are reasonably required by the landlord for the substantial alteration or reconstruction thereof in such a way as to affect

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the business premises or for the demolition thereof, and the Court is satisfied that the landlord has, where necessary, obtained the necessary permit for such alteration, reconstruction or demolition and has given to the tenant not less than three months' notice in writing to vacate the business premises."

Counsel for the appellant mainly contended that the trial Court wrongly issued the order of ejectment taking into consideration that the landlord has obtained a permit for the demolition of the business premises only, once he made a finding that the respondent reasonably required the said business premises for the reconstruction of same; and that he has failed to secure also the necessary permit for the reconstruction of the premises in question.

The question whether the business premises are reasonably required by the landlord is one entirely of fact for the trial judge. Cf. *Chandrel v. Strevett*, L [1947] 1 All E.R. 164 per Bucknill L.J., at p. 167. There is no doubt that the case of the respondent all along before the trial judge was that the business premises in question were reasonably required by him for the demolition and reconstruction of same, and that the landlord had followed the wording of paragraph (h) of s. 10(1) of Law 17/61, both in paragraph 3 of his pleading and the letter of July 11, 1972, addressed to the tenant.

Now, looking at the terms of s. 10(1)(h), we are of the view that if any one of those grounds are established, the landlord's application for recovery of possession must succeed if the Court is satisfied that the landlord where necessary obtained the necessary permit, because each ground is entirely separate and independent and which if proved entitles the landlord to succeed. If authority is needed, we think we can derive sufficient guidance from the case of *Fisher v. Taylors Furnishing Stores Ltd* [1956] 2 All E.R. 78, where Parker L.J., at p. 84 after dealing with the Landlord and Tenant Act, 1954, read paragraph (f) which is

"That on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof

and that he could not reasonably do so without obtaining possession of the holding.”

His Lordship went on

“From the scheme of the Act as there laid down I should have thought that it was clear, apart from authority, that, if any of those grounds of objection is established, the tenant’s application for a new lease must fail. Each ground is entirely separate and independent, and each, if proved, entitles the landlord to succeed.”

In *Betty’s Cafés Ltd. v. Phillips Furnishing Stores Ltd.* [1958] 1 All E.R. 607, Lord Morton of Henryton in his speech in the House of Lords, quotes with approval at p. 619 what Parker L.J. has said in *Fisher* case (*supra*). See also *Little Park Service Station Ltd. v. Regent Oil Co. Ltd.* [1967] 2 All E.R. 257, where the dicta of Parker L.J. was also applied in that case.

In *Housleys Ltd. v. Bloomer-Holt Ltd.* [1966] 2 All E.R. 966, Sellers, L.J., dealing with the same question of demolition and reconstruction of premises had this to say at p. 968 :-

“Although there may have been earlier authorities, yet by the time when the Court of Appeal had considered *Fisher v. Taylor Furnishing Stores Ltd.*, [1956] 2 All E.R. 78 and the House of Lords had considered *Betty’s Cafés, Ltd. v. Phillips Furnishing Stores Ltd.* [1958] 1 All E.R. 607 where Lord Morton of Henryton in particular quotes. [1958] 1 All E.R. at p. 619 with approval what Parker, L.J. had said in the *Fisher* case, [1956] 2 All E.R. at p. 84, it was clear that each of the several grounds which were available under s. 30 is an entirely separate and independent ground which, if proved entitles the landlord to succeed. The question at this trial was whether the landlords had brought themselves within one of the provisions of s. 30(1)(f).

A point has been taken in paragraph (i) of the answer and here that the landlords’ notice of opposition to the grant of a new tenancy was not a sufficient notice to cover all the matters relied on by the landlords which have been argued here.”

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Later on his Lordship, after quoting the notice in question, had this to say:-

“It will be seen that that does not follow word for word the provision of s. 30(1)(f) of the Act of 1954. It is said that under s. 31 and under s. 25(6) that is not an adequate and clear notice. In my view it is a sufficient notice. It reveals, although not in the precise language, yet sufficiently closely thereto, what are the matters relied on by the landlords. I am far from saying that it may not be desirable always to refer to the particular part of s. 30(1) which is relied on, or even to set out the words precisely; but the differences, which are several, really do not amount to substantial difference from the words of the section itself.”

In the light of these judicial pronouncements, we have reached the view that the learned trial judge misdirected himself in granting an order of ejection against the appellant because it is clear from the facts found by him that the landlord required the business premises in question for the demolition and reconstruction of same and once the latter has failed to obtain also the necessary permit for reconstruction of the premises, the learned judge was wrongly satisfied or made up his mind that the landlord brought himself within the provisions of s. 10(1)(h) of our law. We would, therefore, reverse the judgment of the trial judge, and allow the appeal on this short question of construction, with costs in favour of the appellant.

*Appeal allowed with costs.*