

1977  
May 5

[TRIANAFYLLIDES, P., STAVRINIDES, A. IOIZOU, JJ]

ELLI G. MEITZ AND OTHERS,

ELLI G.  
MEITZ  
AND OTHERS  
v.  
ANDREAS  
PELENGARIS

*Appellants,*

v.

ANDREAS PELENGARIS,

*Respondent.*

(Civil Appeal No. 5639).

*Landlord and Tenant—Statutory tenancy—Tenancy agreement—  
Providing for progressively increased rent for every succeeding  
year of tenancy—Unenforceable—Section 7(1) of the Rent  
Control Law, 1975 (Law 36/75).*

*Rent Control Law, 1975 (Law 36/75)—Statutory tenant—Tenancy  
agreement—Providing for progressively increased rent for  
every succeeding year—Treated as an “imposition” of an in-  
crease of rent contrary to s. 7(1) of the Law—Unenforceable—  
Construction of “to be imposed” in the said section 7(1).* 5

*Landlord and Tenant—Statutory tenancy—Not inconsistent with  
the notion of a statutory tenancy that it should interfere to a  
certain extent, with rights created by contract.* 10

The appellants in this appeal were the owners of a shop  
situate at Nicosia and the respondent was the tenant of this  
shop by virtue of a contract of lease dated 29th November, 15  
1974, the tenancy commencing on the 1st December, 1974  
and ending on the 30th November 1979.

The rent payable under this contract was C£160.- monthly  
for the first year, C£185 monthly for the second year,  
C£250 monthly for the third year, C£275 monthly for the 20  
fourth year and C£300 monthly for the fifth year.

Upon an application by the tenant under section 7\* of the

\* Section 7 provides as follows:

“7(1) No increase of rent of dwelling houses or shops may be imposed  
on a statutory tenant except as in this Law provided.

(2) It shall be lawful for the tenant or the landlord of any dwelling  
house or shop, if he considers himself to be aggrieved, to apply to the  
Court to determine the rent payable in respect of such dwelling house  
or shop.

(3) Where such an application is made to the Court, the Court shall  
consider it and after making such inquiry as it may think fit, and giving  
to each party an opportunity of being heard, and taking into considera-  
tion all the circumstances, shall either approve the rent payable under  
the tenancy or increase or reduce it to such sum as the Court may in  
all the circumstances think reasonable, and such sum determined shall  
be considered as the rent which the tenant must pay to the landlord.”

Rent Control Law, 1975 (Law 36/75) the trial Court determined that the rent payable in respect of the above shop was C£160 per month.

5 The sole issue in the appeal was whether the provisions of section 7(1) of Law 36/75, which excluded the imposition of any increase of rent, operated so as to render unenforceable the clause in the tenancy agreement which provided for progressively increased rent for every succeeding year of the tenancy.

10 It was not in dispute that the tenant was a "statutory tenant" of the premises concerned in the sense of section 7(1) above.

15 *Held*, dismissing the appeal, that this Court will uphold the construction placed upon section 7(1) by the trial judge in treating a demand, on the part of the landlords, that the tenant should comply with the clause in the tenancy agreement providing for progressively increased rent for every succeeding year, as an imposition of an increase of rent contrary to section 7(1); that this Court construes, for this purpose, the expression "να ἐπιβληθῆ" ("be imposed") in section 7(1) as equivalent  
20 to the expression "to be enforced", by means of legal proceedings based on the said clause; that, otherwise, section 7(1) would be rendered practically meaningless; and that any other construction of it would be inconsistent with the contents of Law 36/75 as a whole and with the object of such Law, as  
25 manifested by section 3 as well as other provisions in it.

(2) That it is not inconsistent with the notion of a statutory tenancy that it should interfere, to a certain extent, with rights created by a contract; and that, accordingly, the appeal will be dismissed.

30 *Appeal dismissed.*

*Per curiam*: Of course, it is open to the landlords to apply to the District Court, under section 7, for the fixing of the reasonable rent, and the existence of the aforesaid rent clause in the tenancy agreement is one of the circumstances to be taken  
35 into account in the course of doing so.

Cases referred to:

*Boyer and Others v. Warbey* [1953] 1 All E.R. 269 at p. 273.

**Appeal.**

Appeal by the landlords against the judgment of the

1977  
May 5

—  
ELLI G.  
MEITZ  
AND OTHERS  
v.  
ANDREAS  
PELENGARIS

1977  
May 5  
—  
ELLI G.  
MEITZ  
AND OTHERS  
v.  
ANDREAS  
PELENGARIS

District Court of Nicosia (Kourris, S.D.J.) (application No. 108/76) whereby it was determined that the rent payable in respect of their premises in Nicosia (at Evagoras Avenue), was C£ 160.- per month.

*A. Markides*, for the appellants.

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*G. Mitsides*, for the respondent.

*Cur. adv. vult.*

The judgment of the Court was delivered by:-

• TRIANTAFYLLIDES, P.: The appellants have appealed against a judgment of the Nicosia District Court by which there was determined that the rent payable in respect of premises in Nicosia, at Evagoras avenue, belonging to them, and let to the respondent, is C£ 160 per month. 10

The said judgment was given in an application made by the respondent in this appeal (who was the applicant in the court below and will be referred to hereinafter as the "tenant") and in which the appellants in this appeal were the respondents (to be referred to hereinafter as the "landlords"). 15

By virtue of such application the tenant sought a declaration that - 20

"(a) The rent payable in respect of the premises situate at Evagoras Avenue, No. 23A. the ownership of the respondents, cannot be increased more than the sum which was payable on 31. 12.1974, except as in Law 36/75 is provided, and 25

(b) The provisions of the contract of lease for increase of rent for the second, third, fourth and fifth year do not apply". 30

The salient facts, as found by the trial court and set out in its judgment, are as follows:-

"The respondents are the owners of a shop situate at No. 23A Evagoras Avenue, Nicosia, and the applicant is the tenant of the shop by virtue of a contract of lease dated 29th November, 1974, the tenancy commencing on the 1.12.74 and ending on the 30.11. 79 with the following rent:- 35

1977  
May 5

---  
ELLI G.  
MEITZ  
AND OTHERS  
v.  
ANDREAS  
PELENGARIS

- (a) The rent payable for the first year will be C£ 160.- monthly.
- (b) For the second year the rent payable will be C£ 185.- monthly.
- 5 (c) For the third year the rent payable will be C£ 250.- monthly.
- (d) For the fourth year the rent payable will be C£ 275.- monthly.
- 10 (e) For the fifth year the rent payable will be C£ 300.- monthly”.

The relevant legislative provision is section 7 of the Rent Control Law, 1975 (Law 36/75), which reads as follows:-

15 “7-(1) Ούδεμία αύξησις ένοικίου κατοικιών ή καταστημάτων δύναται να έπιβληθῆ επί θεσμίου ένοικιαστού πλην ώς έν τῷ παρόντι Νόμῳ διαλαμβάνεται.

20 (2) Είναι νόμιμον διά τόν ένοικιαστήν ή τόν ιδιοκτήτην οίασδήποτε κατοικίας ή καταστήματος. εάν θεωρηῆ έαυτὸν ήδικημένον. να άποτεινηται δι' αίτήσεως εις τὸ Δικαστήριον διά τόν καθορισμὸν τοῦ ένοικίου τοῦ πληρωτέου έν σχέσει πρὸς τήν τοιαύτην κατοικίαν ή κατάστημα.

25 (3) Εις ήν περιπτώσιν ύποβάλλεται τοιαύτη αίτησις εις τὸ Δικαστήριον. τὸ Δικαστήριον εξετάζει ταύτην και, κατόπιν διεξαγωγῆς τοιαύτης έρεύνης οίαν τοῦτο ήθελε θεωρήσει κατάλληλον και παροχῆς εις έν έκαστον τῶν διαδίκων τῆς εύκαιρίας να τύχη άκροάσεως. και. λαμβανομένων ύπ' ὄψιν ὄλων τῶν περιστάσεων. είτε έγκρίνει τὸ ένοίκιον τὸ πληρωτέον δυνάμει τῆς ένοικιάσεως. είτε αύξάνει ή έλαττώνει τοῦτο εις τοιοῦτον ποσὸν οῖον τὸ Δικαστήριον ήθελε θεωρήσει λογικὸν και τὸ αὔτω καθορισθὲν ποσὸν θεωρεῖται ώς τὸ ένοίκιον τὸ ὁποῖον ὁ ένοικιαστής ύποχρεοῦται να καταβάλλη εις τὸν ιδιοκτήτην”.

30 (“7-(1) No increase of rent of dwelling houses or shops may be imposed on a statutory tenant except as in this Law provided.

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- (2) It shall be lawful for the tenant or the landlord of any dwelling house or shop, if he considers himself to be aggrieved, to apply to the Court to determine the rent payable in respect of such dwelling house or shop. 5
- (3) Where such an application is made to the Court, the Court shall consider it and after making such inquiry as it may think fit, and giving to each party an opportunity of being heard, and taking into consideration all the circumstances, shall either approve the rent payable under the tenancy or increase or reduce it to such sum as the Court may in all the circumstances think reasonable, and such sum determined shall be considered as the rent which the tenant must pay to the landlord"). 10 15

It has not been in dispute, in the present case, that the tenant is a "statutory tenant" of the premises concerned, in the sense of section 7 above. 20

The issue to be resolved is whether the provisions of subsection (1) of section 7, which exclude the imposition of any increase of rent, operate so as to render unenforceable the clause in the tenancy agreement which provides for progressively increased rent for every succeeding year of the tenancy. 25

It has been submitted by counsel for the landlords that this is not so because such a construction of subsection (1) would not be the one which is most agreeable to justice and reason; and we have been referred, in this respect, to Maxwell on Interpretation of Statutes, 10th ed., p. 191, where it is stated that "In determining either the general object of the legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with convenience, reason, justice and legal principles, should, in all cases of doubtful significance, be presumed to be the true one". (The corresponding passage is to be found now in Maxwell on Interpretation of Statutes, 12th ed., p. 199). 30 35

It has been submitted, further, by counsel for the land- 40

lords that we should hold that subsection (1) of section 7, above, does not affect the clause in the tenancy agreement concerning progressively increased rent, and that this is in conformity with the well established legal principles concerning the freedom to contract and the sanctity of contractual obligations.

On the other hand, counsel for the tenant, in supporting the view of the trial judge that the Legislature on enacting section 7 intended that there would not be payable any increase of rent, whether expressly provided for in the contract of tenancy or otherwise, submitted that we must pay due regard to the object of Law 36/75 and construe such Law as a whole; he referred, in this respect, to Halsbury's Laws of England, 3rd ed., vol. 36, p. 395, para. 594, and argued that section 7(1) should be construed in such a manner as to avoid any inconsistency or repugnancy with other parts of Law 36/75, and, in particular, with section 3 of such Law, from which there can be deduced the object of the Law, which is to ensure for tenants just rents and security of tenure, in certain protected areas.

Having considered carefully the issue before us, we have, in the end, decided to uphold the construction placed upon section 7(1) by the trial judge in treating a demand on the part of the landlords, that the tenant should comply with the clause in the tenancy agreement providing for progressively increased rent for every succeeding year, as an "imposition" of an increase of rent contrary to section 7(1); we construe, for this purpose, the expression "να ἐπιβληθῆ" ("be imposed") as equivalent to the expression "to be enforced", by means of legal proceedings based on the said clause; otherwise, section 7(1) would be rendered practically meaningless; also, any other construction of it would be inconsistent with the contents of Law 36/75 as a whole and with the object of such Law, as manifested by section 3 as well as other provisions in it.

It is not inconsistent with the notion of a statutory tenancy that it should interfere, to a certain extent, with rights created by contract.

In *Boyer and others v. Warbey*, [1953] 1 All E.R. 269, Sir Raymond Evershed M.R. said (at p. 273):-

"The character of the statutory tenancy. I have al-

1977  
May 5  
—  
ELLI G.  
MEITZ  
AND OTHERS  
v.  
ANDREAS  
PELENGARIS

ready 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, from which it would appear to me to follow that covenants to pay money 'inextricably bound up with' covenants to deliver up possession would cease with the latter".

Of course, it is open to the landlords to apply to the District Court, under section 7, for the fixing of the reasonable rent, and the existence of the aforesaid rent clause in the tenancy agreement is one of the circumstances to be taken into account in the course of doing so.

For all the above reasons this appeal is dismissed, but, in line with the trial judge, we are not prepared to make any order as to its costs.

*Appeal dismissed.*  
*No order as to costs.*