

1978 June 30

[TRIANTAFYLIDIS, P., DEMETRIADES, SAVVIDES, JJ.]

ANASTASSIA S. KONTOU,

Appellant-Plaintiff,

v.

ANTONIS SOLOMOU,

Respondent-Defendant,

(Civil Appeal No. 5804).

*Landlord and tenant—Statutory tenancy—Recovery of possession—
Premises “reasonably required by the landlord for substantial
alterations or reconstruction” —Section 16 (1) (h) of the Rent
Control Law, 1975 (Law 36 of 1975)—Notion of “reasonable
5 requirement”—No room for exercise of discretion by trial Judge
where he is convinced that requirements of the section are satisfied
—Recovery of possession cannot be refused merely because land-
lord proposes to occupy the reconstructed premises himself.*

10 The appellant applied for an order of recovery of possession
of a dwelling-house of hers on the ground that it was reasonably
required by her for substantial alterations and reconstruction,
under section 16 (1) (h)* of the Rent Control Law, 1975.

15 Upon appeal against the dismissal of the application counsel
for the appellant contended that the trial Judge misdirected
himself as regards the correct application of the said section in
that he took the view that the landlord had to show “a genuine
present need for the premises and not to be moved by consi-
derations of preference and convenience only”, and that the
notion of “reasonable requirement” in the said section connotes
20 “something more than desire although at the same time some-
thing less than absolute necessity will do”.

Held, allowing, the appeal,(1) that the notion of “reasonable
requirement” in a case of a claim for possession for the purpose
of substantial alterations or reconstruction is linked only to

* Quoted at p. 427 *post*.

whether or not it is reasonable for the landlord to obtain possession for that purpose having regard to the nature and extent of the proposed alterations or reconstruction, and that it is unrelated to factors such as those mentioned in the above quoted passages from the judgment of the trial Judge (see, *inter alia*, *Heath v. Drown* [1972] 2 All E.R. 561). 5

(2) That, moreover, if the trial Judge had been convinced that the requirements laid down in the said section 16 (1) (h) were satisfied then there was no room for the exercise of any discretion on his part in relation to the making of an order for possession; that the trial Judge could not refuse to make an order for possession merely because the appellant proposes to occupy the reconstructed premises herself (see *Fisher v. Taylors Furnishing Stores, Ltd.* [1956] 2 All E.R. 78); and that, accordingly, the trial Judge misdirected himself in law. 10 15

Appeal allowed. Retrial by another Judge ordered.

Cases referred to:

Yerasimou v. Rousoudhiou (1974) 1 C.L.R. 107, at p. 112;
Fisher v. Taylors Furnishing Stores, Ltd., [1956] 2 All E.R. 78; 20
Fernandez v. Walding [1968] 1 All E.R. 994;
Heath v. Drown [1972] 2 All E.R. 561.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Orphanides, S.D.J.) dated the 1st February, 1978 (Application No. 156/77) whereby her application for an order of recovery of possession of a dwelling-house was dismissed. 25

N. Andreou, for the appellant.

E. Emilianides, for the respondent. 30

Cur. adv. vult.

The judgment of the Court was given by:

TRIANTAFYLLIDES P.: The appellant, who is the owner of a dwelling-house, which is the subject matter of the present proceedings, applied to the District Court of Nicosia for an order of recovery of possession of the said premises, on the ground that they are reasonably required by her for substantial 35

alterations and reconstruction, under section 16(1)(h) of the Rent Control Law, 1975 (Law 36/75), which reads as follows:—

5 “16.—(1) Ουδέμια απόφασις καὶ οὐδὲν διάταγμα ἐκδίδεται διὰ τὴν ἀνάκτησιν τῆς κατοχῆς οἰασδῆποτε κατοικίας ἢ καταστήματος, διὰ τὸ ὁποῖον ἰσχύει ὁ παρῶν Νόμος, ἢ διὰ τὴν ἐκ τούτου ἔξωσιν ἐνοικιαστοῦ, πλὴν τῶν ἀκολουθῶν περιπτώσεων:

10 (η) εἰς περίπτωσιν καθ’ ἣν κατοικία ἢ κατάστημα ἀπαιτεῖται λογικῶς ὑπὸ τοῦ ἰδιοκτῆτου διὰ τὴν οὐσιαστικὴν μετατροπὴν ἢ τὴν ἐπανοικοδόμησιν τούτου, κατὰ τοιοῦτον τρόπον ὥστε νὰ ἐπηρεάζεται τὸ ἀκίνητον ἢ διὰ τὴν κατεδάφισιν τούτου, τὸ δὲ Δικαστήριον εἶναι πεπεισμένον ὅτι ὁ ἰδιοκτῆτης ἐξησφάλισεν, ὡσάκις ἦτο ἐπανάγκες τὴν ἀναγκαίαν ἄδειαν διὰ τὴν τοιαύτην μετα-

15 τροπὴν, ἐπανοικοδόμησιν ἢ κατεδάφισιν καὶ παρέσχεν οὐχὶ βραχυτέραν τῶν τριῶν μηνῶν ἐγγραφον προειδοποίησιν εἰς τὸν ἐνοικιαστὴν νὰ ἐκκενώσῃ τὸ ἀκίνητον· ἢ”

20 (“ 16.—(1) No judgment or order for the recovery of possession of any dwelling-house or shop, to which this Law applies, or for the ejection of a tenant therefrom, shall be given or made except in the following cases:—

25 (h) where the dwelling-house or shop is reasonably required by the landlord for the substantial alteration or reconstruction thereof in such a way as to affect the 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 premises; or”).

30

The trial Judge has dismissed the application of the appellant and, as a result, this appeal has been filed.

35 The aforementioned section corresponds to section 16(1)(j) of the Rent Control Law, Cap. 86, as amended by the Rent Control (Amendment) Law, 1968 (Law 8/68), and to section 10(1)(h) of the Rent Control (Business Premises) Law, 1961

(Law 17/61); and it is useful to note straightway that in *Yerasimou v. Rousoudhiou*, (1974) 1 C.L.R. 107, 112, this Court has had occasion to consider the application of section 10(1)(h) of Law 17/61.

By the first ground of appeal it is contended that the trial Judge has misdirected himself as regards the correct application of section 16(1)(h) of Law 36/75 in that he took the view that the appellant landlord had to show "a genuine present need for the premises and not to be moved by considerations of preference and convenience only", and that the notion of "reasonable requirement" in the said section connotes "something more than desire although at the same time something less than absolute necessity will do".

A corresponding, but not identical and not fully analogous, provision in England is section 30(1)(f) of the Landlord and Tenant Act, 1954; and case-law in relation to the construction of that provision, such as *Fisher v. Taylors Furnishing Stores, Ltd.*, [1956] 2 All E.R. 78, *Fernandez v. Walding*, [1968] 1 All E.R. 994 and *Heath v. Drown*, [1972] 2 All E.R. 561, shows that the notion of "reasonable requirement" in a case of a claim for possession for the purpose of substantial alterations or reconstruction is linked only to whether or not it is reasonable for the landlord to obtain possession for that purpose having regard to the nature and extent of the proposed alterations or reconstruction, and that it is unrelated to factors such as those mentioned in the above quoted passages from the judgment of the trial Judge.

Moreover, we do agree with counsel for the appellant that if the trial Judge had been convinced that the requirements laid down in section 16(1)(h) of Law 36/75 were satisfied then there was no room for the exercise of any discretion on his part in relation to the making of an order for possession; nor, as the *Fisher* case, *supra*, shows, could he have refused to make an order for possession merely because the appellant proposes to occupy the reconstructed premises herself.

We have, therefore, to hold that the trial Judge misdirected himself in law when applying the relevant legislative provision to the claim of the appellant.

For all the foregoing reasons this appeal is allowed.

What we had to consider next is whether or not, on the basis of the record before us, we could or should make ourselves the order for possession applied for by the appellant; we are of the view that the material contained in such record is not
5 sufficient to enable us to proceed to decide safely in this respect either way, and that, therefore, the better course is to send this case back for retrial by another Judge of the Nicosia District Court.

The costs of the appellant in this appeal to be borne by the
10 respondent.

Appeal allowed with costs.