1978 August 7

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

SAVVAS YIANNOPOULOS,

Appellant,

v.

MARITSA THEODOULOU,

Respondent.

(*Civil Appeal No.* 5817).

Landlord and tenant—Contractual tenancy—Transformed into a statutory tenancy even before the expiry of the period of the contractual tenancy—Rent Control Law, 1975 (*Law* 36/75)—*Eviction order on ground of arrears of rent—Made in terms rendering inoperative the clause concerning duration of tenancy and allowing tenant to remain in the premises on a month to month basis—Landlord could seek order for possession under section* 16(1)(*g*) *of the Law prior to the expiry of the original period of the contractual tenancy.*

Landlord and tenant—Statutory tenancy—Recovery of possession—Premises reasonably required by landlord for possession by her daughter—Section 16(1)(*g*) *of the Rent Control Law*, 1975 (*Law* 36/75)—*Approach to the notion of "reasonable requirement" and "hardship" in the said section* 16(1)(*g*)—*Onus of proving "greater hardship" on the tenant—Who failed to discharge onus of satisfying Court of Appeal that the trial Court has wrongly found that premises are reasonably required as a residence by the already married daughter of the respondent, or that it was not reasonable to make the order of eviction, having regard to all relevant considerations, including the question of the alternative accommodation and the aspect of the balance of hardship—Appeal dismissed but effect of order of possession stayed for a further period.*

Landlord and tenant—Statutory tenancy—Recovery of possession—Previous order for possession on ground of arrears of rent—Need not be set aside before an application for possession on another ground is made—Sections 5 *and* 16(1)(*g*) *of the Rent Control Law*, 1975 (*Law* 36/75).

Civil Procedure—Trial of civil cases—Adjournment of trial with a view to adduce evidence not applied for—Therefore, no merit in relevant complaint that no adjournment was granted.

The appellant in this appeal was at all material times a statutory tenant of a first floor flat at Strovolos in the sense of section 2 of the Rent Control Law, 1975 (Law 36/75). On February 28, 1978 an order for possession was granted to the respondent (landlord), under section 16(1)(g)* of Law 36/75, on the ground that the premises were reasonably required to be used as a residence for her daughter who married on July 10, 1977.

The respondent was living with her family in the ground floor of the premises, which had only two bedrooms plus the other usual residential accommodation, and she had three children, one of whom the said married daughter who lived, also, with her husband, in the said ground floor; as a result there was lack of space and the respondent and her husband have had to use an adjacent shop of theirs as a bedroom.

The appellant who lived in the said first floor of the premises, was married and had two grown up children, both of whom were working and contributing towards the expenses of the household.

The trial Judge, in reaching the conclusion that it was reasonable, in the light of all the circumstances of the case, to make the order for possession, referred to the accommodation problem of the respondent, and having pointed out that both the appellant and his two children were working and that it was, therefore, within their financial capabilities to find alternative accommodation, even at a higher rent, decided that the respondent would suffer greater hardship if the order for possession was refused, than the appellant if such order was made.

The appellant (tenant) came to be in possession of the premises by virtue of a tenancy agreement of five years duration from May 1, 1973 to April 30, 1978. On July 1, 1976 and prior to the expiry of the period of the tenancy, in proceedings between the same parties in another action, an eviction order was made on the ground of arrears of rent.

Upon appeal against the order for possession the appellant contended:

* Quoted at p. 220 *post*.

(a) That the application for an order of possession was premature and, therefore, it could not have been granted, because at the time when it was filed, on July 20, 1977, there had not yet expired the five years' period of the tenancy provided for in the tenancy agreement.

(b) That the trial Judge did not take duly into account all relevant considerations in deciding on the issue of the relative balance of hardship, and especially, that he did not pay due regard to the aspect of the availability of alternative accommodation for the appellant, as a statutory tenancy.

(c) That it has not been established that the landlord reasonably required the premises in question as a residence for her married daughter and that the finding of the trial Court, to that effect, was erroneous.

(d) That the trial Judge could not make the order appealed from so long as there existed in force the previous order for possession, which had to be set aside, under section 5 of Law 36/75, before the present application for another order for possession could be made.

(e) That the appellant was not granted an adjournment by the trial Court so as to be afforded the opportunity to adduce evidence in support of his case.

Held, dismissing the appec , (1) that unlike previous enactments in the same branch of the Law, the Rent Control Law, 1975 (Law 36/75) transforms a contractual tenancy into a statutory tenancy even before the expiry of the period of the contractual tenancy; that in this case the problem of whether an order for possession can be sought, or granted, prior to the expiry of the period of a contractual tenancy need not be resolved, because the previous eviction order, which was made on the grounds of arrears of rent, was made on such terms that it rendered inoperative the clause concerning the five years' duration of the tenancy and allowed only the appellant to remain in the premises as a tenant on a month to month basis, provided that he would pay the rent.

(2) That the onus of proving that greater hardship will be caused if the order for possession is granted, than if it is refused, lies, under section 16(1)(g) of Law 36/75, on the tenant; that in considering reasonableness, under section 16(1)(g) of this Law,

the duty of the Judge is to take into account all relevant circumstances as they exist at the date of hearing; that the landlord cannot be, in a case of this nature, the sole arbiter of his requirements once this matter is qualified by law with reasonableness; that for a dwelling-house to be reasonably required in the sense of section 16(1)(g) it must be the subject of a genuine present need on the part of the landlord; that the notion of reasonable requirement under this section entails a "definite and immediate need of the premises"; that the position of the tenant (e.g. any hardship to him) is irrelevant, although it is material on the specific issue of hardship and the general issue of reasonableness; that, bearing in mind the particular circumstances of this case, the appellant has failed to discharge the onus of satisfying this Court that the trial Judge has wrongly found that the premises are reasonably required as a residence by the already married daughter of the respondent, or that it was not reasonable to make the order of eviction, having regard to all relevant considerations, including the question of the alternative accommodation and the aspect of the balance of hardship.

(3) That the previous order of possession had not first to be set aside, under section 5 of Law 36/75, before the present application could be made, because the said previous order was made on the ground of arrears of rent, which is an entirely different and separate ground for possession from the one on which the appealed from order for possession was made.

(4) (*With regard to the contention for non-adjournment*): That at no time did Counsel for the appellant apply for an adjournment in order to adduce evidence which was not then available; and that, therefore, there is no merit in the relevant complaint of the appellant.

(5) That, therefore, the appeal must be dismissed, but as the appellant had to deliver vacant possession on July 31, 1978 and as this appeal was heard on July 21, 1978 and judgment has been reserved until August 7, 1978, this Court in the exercise of its relevant discretionary powers, which are the same as those of the trial Court will stay the execution of the order of possession up to, and including, September 30, 1978.

Appeal dismissed.

Cases referred to:

Katsikides v. *Constantinides* (1969) 1 C.L.R. 31;

Meitz and Others v. *Pelengaris* (1977) 6 J.S.C. 1035, at pp 1040–1042 (to be reported in (1977) 1 C.L.R.);

Cumming v. *Danson* [1942] 2 All E.R. 653 at p. 655;

Ikosis v. *Thoma*, 21 C.L.R. 125 at p. 127;

Ireland v. *Taylor* [1949] 1 K.B. 300;

Kennealy and Another v. *Dunne and Another* [1977] 2 All E.R 16;

Andreou v. *Christodoulou* (1978) 1 C.L.R. 192

Appeal.

Appeal by the tenant against the order of the District Court of Nicosia (Papadopoullos S.D.J.) dated the 28th February, 1978, (Application No. 328/77) whereby he was ordered to deliver vacant possession to the landlord of a dwelling house.

A. Vassiliadou (*Miss*), for the appellant.

P. Frakalas, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment of the Court. This appeal has been made against an order of eviction requiring the appellant, as the tenant of a first floor flat at Axiothea Street, No. 18, Strovolos, which is the property of the respondent, to deliver vacant possession of it to her on July 31, 1978.

The said order was made on February 28, 1978, but the trial Judge, in the exercise of his relevant powers under section 16(2) of the Rent Control Law, 1975 (Law 36/75), suspended its effect up to July 31, 1978.

It is common ground that the appellant was, at all material times, a statutory tenant of the premises in question, in the sense of section 2 of Law 36/75.

The ground on which the order for possession was sought by the respondent, and was granted by the trial Court, was that the premises are reasonably required to be used as a residence of the daughter of the respondent, who married on July 10, 1977.

In this respect section 16(1) of Law 36/75 provides as follows:-

" 16.–(1) Οὐδεμία ἀπόφασις καὶ οὐδὲν διάταγμα ἐκδίδεται διὰ τὴν ἀνάκτησιν τῆς κατοχῆς οἱασδήποτε κατοικίας ἢ καταστήματος, διὰ τὸ ὁποῖον ἰσχύει ὁ παρὼν Νόμος, ἢ διὰ

τὴν ἐκ τούτου ἔξωσιν ἐνοικιαστοῦ, πλὴν τῶν ἀκολούθων περιπτώσεων:

.....

(ζ) εἰς περίπτωσιν καθ' ἣν ἡ κατοικία ἢ τὸ κατάστημα ἀπαιτεῖται λογικῶς πρὸς κατοχὴν ὑπὸ τοῦ ἰδιοκτήτου, τῆς συζύγου του, τοῦ υἱοῦ του, τῆς θυγατρὸς του, τοῦ γαμβροῦ του, τῆς νύμφης του, τοῦ ἀδελφοῦ του ἢ τῆς ἀδελφῆς του, οἵτινες εἶναι ἡλικίας ἄνω τῶν δεκαοκτὼ ἐτῶν καὶ εἰς οἱανδήποτε τῶν περιπτώσεων τούτων τὸ Δικαστήριον θεωρεῖ λογικὴν τὴν ἔκδοσιν τοιαύτης ἀποφάσεως ἢ τοιούτου διατάγματος:

Νοεῖται ὅτι οὐδεμία ἀπόφασις καὶ οὐδὲν διάταγμα θὰ ἐκδίδωνται δυνάμει τῆς παραγράφου αὐτῆς, ἐὰν ὁ ἐνοικιαστὴς πείσῃ τὸ Δικαστήριον ὅτι, λαμβανομένων ὑπ' ὄψιν ὅλων τῶν περιστάσεων τῆς ὑποθέσεως, θὰ ἐπροξενεῖτο μεγαλυτέρα ταλαιπωρία διὰ τῆς ἐκδόσεως τοῦ διατάγματος ἢ τῆς ἀποφάσεως παρὰ διὰ τῆς ἀρνήσεως ἐκδόσεως τούτου.

Διὰ τοὺς σκοποὺς τῆς παραγράφου αὐτῆς ὁ ὅρος 'περιστάσεις τῆς ὑποθέσεως' περιλαμβάνει τὸ ζήτημα κατὰ πόσον ὑπάρχει διαθέσιμον ἕτερον μέρος στεγάσεως διὰ τὸν ἰδιοκτήτην ἢ τὸν ἐνοικιαστήν, καὶ τὸ ζήτημα κατὰ πόσον ὁ ἰδιοκτήτης ἠγόρασε τὸ ἀκίνητον μετὰ τὴν ἡμερομηνίαν καθ' ἣν ἐτέθη ἐν ἰσχύϊ ὁ παρὼν Νόμος πρὸς τὸν σκοπὸν ἀποκτήσεως κατοχῆς δυνάμει τῶν διατάξεων τῆς παρούσης παραγράφου.

..... "

("16.-(1) No judgment or order for the recovery of possession of any dwelling house or 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:

.....

(g) where the dwelling house or business premises are reasonably required for occupation by the landlord, his spouse, son, daughter, son-in-law, daughter-in-law, brother or sister, who are over eighteen years of age, and in any such case the Court considers it reasonable to give such a judgment or made such an order:

Provided that no judgment or order shall be given or made under this paragraph if the tenant satisfies the Court that, having regard to all the circumstances of the case,

greater hardship would be caused by granting the order or judgment than by refusing to grant it.

For the purposes of this paragraph the expression 'circumstances of the case' shall include the question whether other accommodation is available for the landlord or the tenant, and the question whether the landlord purchased the premises after the date of the coming into operation of this Law for the purpose of gaining possession under the provisions of this paragraph;

. . . . . ").

Section 16(1)(g) corresponds to section 10(1)(g) of the Rent Control (Business Premises) Law, 1961 (Law 17/61), and to section 16(1)(g) of the Rent Control Law, Cap. 86, as amended by the Rent Control (Amendment) Law, 1968 (Law 8/68).

It is a provision which was taken from the rent control legislation in England, on which our corresponding legislation has been modelled, and it corresponds to provisions such as section 3 and paragraph (h) of the First Schedule to the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 (see Halsbury's Statutes of England, 2nd ed., vol. 13, pp. 1044, 1048, 1060), as amended by paragraph 21 of the Sixth Schedule to the Rent Act, 1957 (see Halsbury's Statutes, *supra*, vol. 37, pp. 550, 600) and, also, to Case 8 of the Third Schedule to the Rent Act, 1968 (see Halsbury's Statutes of England, 3rd ed., vol. 18, pp. 777, 902).

The first issue with which we have had to deal in the present appeal is the contention of the appellant that the application of the respondent for an order of possession was premature, and, therefore, it could not have been granted, because at the time when it was filed, on July 20, 1977, there had not yet expired the five years' period of the tenancy provided for in the agreement by virtue of which the premises were leased by the respondent to the appellant from May 1, 1973, to April 30, 1978.

In this respect reliance was placed, *inter alia*, on the provisions of section 21(1) of Law 36/75, which provides that a statutory tenant remains in possession subject to the terms of the lease in so far as they are consistent with the nature of the statutory tenancy. This section corresponds to section 15(1) of Law 17/61, as well as to section 21(1) of Cap. 86, as amended

by Law 8/68; so, it has always been a permanent feature of our rent control legislation, and it is a provision which corresponds to relevant legislative provisions in England, such as section 15(1) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (see Halsbury's Statutes of England, 2nd ed., vol. 13, pp. 981, 1017), as well as section 12(1) of the Rent Act, 1968 (see Halsbury's Statutes of England, 3rd ed., vol. 18, pp. 777, 803).

In relation to the proper construction and true effect of a provision such as section 21(1) of Law 36/75 reference has been made to *Katsikides* v. *Constantinides*, (1969) 1 C.L.R. 31, and *Meitz and Others* v. *Pelengaris*, (1977)* 6 J.S.C. 1035, 1040–1042, as well as to Megarry on the Rent Acts, 10th ed., vol. 1, pp. 9–14.

There is no doubt that, unlike previous enactments in the same branch of the law, Law 36/75 transforms a contractual tenancy into a statutory tenancy even before the expiry of the period of the contractual tenancy.

In the present case, however, we do not have to resolve the, indeed, thorny problem of whether an order for possession can be sought, or granted, prior to the expiry of the period of a contractual tenancy, because on July 1, 1976, in proceedings between the same parties in respect of the same premises, that is in action No. 2653/76 in the District Court of Nicosia, an eviction order was made on the ground of arrears of rent and that order, copy of which was produced before the trial Court by counsel for the respondent, was made on such terms that it rendered inoperative the clause concerning the five years' duration of the tenancy and allowed only the appellant to remain in the premises as a tenant on a month to month basis, provided that he would pay the rent.

So, at the time when the present application was made, on July 20, 1977, the appellant was not in possession of the premises for the fixed term of five years specified in the tenancy agreement, and consequently, his present application for possession of the premises cannot, in any event, be regarded as premature on the ground that the said term had not expired when his application was filed.

Another complaint of counsel for the appellant has been that

* To be reported in (1977) 1 C.L.R.

the trial Judge did not take duly into account all relevant considerations in deciding on the issue of the relative balance of hardship, and, especially, that he did not pay due regard to the aspect of the availability of alternative accommodation for the appellant, as a statutory tenant. It has been submitted, further, on behalf of the appellant, that the decision of the trial Judge, in connection with the balance of hardship, is, in any event, erroneous and has been based on considerations which are not supported by the evidence adduced before him.

The onus of proving that greater hardship will be caused if the order for possession is granted, than if it is refused, lies, under section 16(1)(g) of Law 36/75, on the tenant (see, also, in this respect, Megarry, *supra*, at p. 293).

The salient facts of this case are that the respondent is living with her family in the ground floor of the premises, which has only two bedrooms plus the other usual residential accommodation, and that she has three children, one of whom, a daughter, has got married on July 10, 1977, and lives, also, with her husband, in the said ground floor; as a result there is lack of space and the respondent and her husband have had to use an adjacent shop of theirs as a bedroom.

The appellant who, as already stated, lives in the first floor of the premises, is married and has two grown up children, both of whom are working and contributing towards the expenses of the household.

The trial Judge, in reaching the conclusion that it was reasonable, in the light of all the circumstances of the case, to make the order for possession, referred to the accommodation problem of the respondent, and having pointed out that both the appellant and his two children were working and that it was, therefore, within their financial capabilities to find alternative accommodation, even at a higher rent, decided that the respondent would suffer greater hardship if the order for possession was refused, than the appellant if such order was made.

The correct approach of a trial Court to the question of whether it is reasonable to make an order of eviction on a ground such as that which is involved in the present case has been expounded in, *inter alia*, the case of *Cumming* v. *Danson*, [1942] 2 All E.R. 653, where (at p. 655) Lord Greene M.R. stated:-

"In considering reasonableness under sect. 3(1), it is, in

my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, common-sense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account."

Counsel for the appellant, in arguing this case before us, has stressed particularly that it has not been established that the respondent reasonably requires the premises occupied by the appellant as a residence for her married daughter, and that the finding of the trial Court, to that effect, is erroneous.

As was pointed out in the case of *Ikosis* v. *Thoma*, 21 C.L.R. 125, 127, by Zekia J., as he then was, the landlord cannot be, in a case of this nature, the sole arbiter of his requirements once this matter is qualified by law with reasonableness. It is correct that in *Ireland v. Taylor*, [1949] 1 K.B. 300, it was, indeed, held that the landlord is the sole arbiter of his own requirements, but that case is, in our view, clearly distinguishable from the present one, because it was based on section 5(3)(1)(b) of the Landlord and Tenant Act, 1927, in England, where the word "required" is not qualified, as in our own section 16(1)(g) of Law 36/75, by the word "reasonably".

In *Kennealy and Another* v. *Dunne and Another*, [1977] 2 All E.R. 16, the following were stated (at p. 20) by Stephenson L.J. regarding the ground of reasonable requirement as a reason for the eviction of a statutory tenant:-

" The position seems to be that for a dwelling-house to be reasonably required it must be the subject of a genuine present need on the part of the landlord. That was the view of the Sheriff in a Scottish case of *Aitken* v. *Shaw*, which is cited both in Woodfall's Law of Landlord and Tenant, and in Sir Robert Megarry's book on the Rent Acts. Sheriff Blades in that case said: 'The words 'reasonably required' connote something more than desire, although at the same time something much less than absolute necessity will do'. The tenant's position where an order for possession is sought against him under the present

Case 8 cannot, I think, be better put than it was in Sir Robert Megarry's book on The Rent Acts:-

"In determining whether the premises are reasonably required by the landlord, the position of the tenant (e.g., any hardship to him) is irrelevant, although it is of course material on the specific issue of hardship and the general issue of reasonableness. And a tenant cannot say that his premises are not reasonably required merely because the landlord has other tenants against whom he might have proceeded; for as long as the landlord 'satisfies the Court that he 'reasonably' requires a house to live in it must be left to him to say which of his houses he desires to occupy'. Yet this may be relevant on the general issue of reasonableness'."

A recent case of our own Supreme Court on the same point is that of *Andreou* v. *Christodoulou*, (1978) 1 C.L.R. 192, where it was held that the notion of reasonable requirement under section 16(1)(g) of Law 36/75 entails a "definite and immediate" need of the premises. In that case, too, the landlord was alleging requirement of premises for use as residence by his daughter, but the facts were different from those of the present case because his daughter had not yet married; only a marriage proposal had been made and there had arisen certain difficulties due to the attitude of the prospective bridegroom. The Supreme Court held that in the circumstances of that case the trial Court had rightly found that the premises were not reasonably required as a residence by the daughter of the landlord.

Bearing in mind the above legal principles, as well as the aforementioned particular circumstances of the present case, we are of the view that the appellant has failed to discharge the onus of satisfying us that the trial Court has, in the present case, wrongly found that the premises in question are reasonably required as a residence by the already married daughter of the respondent, or that it was not reasonable to make the order of eviction, having regard to all relevant considerations, including the question of the alternative accommodation and the aspect of the balance of harship.

It has been submitted, as another ground of appeal, that the trial Court could not make the appealed from order for possession so long as there existed in force the previous order for possession made, as aforesaid, in action D.C.N. 2653/76; and,

in this respect, it was argued that this previous order had first to be set aside under section 5 of Law 36/75, before the present application for another order for possession of the premises could be made. We do not agree that this view is correct; the previous order for possession was made on the ground of arrears of rent, which is an entirely different and separate ground for possession from the one on which the new order for possession, which has been challenged by the present appeal, was made.

Lastly, we have to deal with the contention of the appellant that he was not granted an adjournment by the trial Court so as to be afforded the opportunity to adduce, at the trial, evidence in support of his case; it was alleged that he had not available at the time such evidence because he had gone to the Court on that day only for the purpose of having a hearing of the case on two preliminary legal issues. It is correct that, as it appears from the record of the trial Court dated January 30, 1978, counsel for the appellant sought to raise first two preliminary legal issues, but the trial Judge decided to proceed with the hearing of the whole case and deal with the said two issues in the course of such hearing. As a result the hearing of the case was completed on that day; but at no time did counsel for the appellant apply for an adjournment in order to adduce evidence which was not then available; we find, therefore, no merit at all in the relevant complaint of the appellant.

For all the above reasons this appeal is dismissed, but as no order for the costs of the trial was made by the trial Court, we are not prepared, in view, also, of the nature of this case, to make an order as regards the costs of this appeal.

As the appellant had to deliver vacant possession on July 31, 1978, in accordance with the eviction order against him, and as this appeal was heard on July 21, 1978, and judgment has been reserved until today, it is necessary to give him some more time in order to comply with the said eviction order, and, in the exercise of our relevant powers, which are the same as those of the trial Court, we stay the execution of the said order up to, and including, September 30, 1978, which we might add is a date about which both sides have just indicated that they are in agreement.

Appeal dismissed. No order as to costs.