1979 August 1

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

CHRISTOS XENOPOULOS,

Appellant,

v.

ELENI C. CONSTANTINIDOU,

Respondent.

(*Civil Appeal No.* 5952).

Landlord and tenant—Statutory tenancy—Rent in arrear—Notice of demand of—Need not be drafted in any particular form—Section 16(1)(a) *of the Rent Control Law,* 1975 (*Law* 36/75).

Estoppel—Promissory estoppel—Waiver—Landlord and tenant—Forbearance by landlord on some occasions to insist on his rights regarding time of payment of rent—Cannot in law give rise to an estoppel or waiver disabling him from sending notice of demand of rent under section 16(1)(*a*) *of the Rent Control Law,* 1975 (*Law* 36/75).

Landlord and tenant—Statutory tenancy—Rent—Reduction by 20%—*Section* 15(1) *of the Rent Control Law,* 1975 (*as amended by Law* 24/77)—"*Substantially affected by the abnormal situation*" *in paragraph* (*a*) *of the second proviso to section* 15(1)—*Meaning of the expression—Whether a tenant has been substantially affected or continues to be so affected a question of fact which is primarily a function of Courts of first instance—A tenant must not only prove that he has been substantially affected by the invasion but that he continues to be so affected.*

Landlord and tenant—Statutory tenancy—Rent—Forbearance by landlord to insist on his rights regarding time of payment—Whether it gives rise to estoppel or waiver disabling him from sending notice of demand under section 16(1)(*a*) *of the Rent Control Law,* 1975 (*Law* 36/75).

Words and Phrases—"*Substantially affected by the abnormal situation*" *in paragraph* (*a*) *of the second proviso to section* 15(1) *of the Rent Control Law,* 1975 (*Law* 36/75 *as amended by Law* 24/77).

The appellant has been the tenant of a house belonging to the respondent since the 10th September, 1975, at the agreed rent of C£30.— a month. As the rent for the month of July, 1978 had not been paid, the respondent addressed the following letter to the appellant on August 4, 1978:

" .....

You are requested to pay me the amount of C£30.— (thirty pounds), that is the rent of the month of July 1978 in respect of my house situate at Ikaros No. 14 Street, Nicosia.

....."

The rent of July remained in arrears for more than 21 days from the 5th August, when the above letter was admittedly received by the appellant, and there had been no tender thereof at any time prior to the 28th August, when the respondent filed an application under section 16(1)(a)* of the Rent Control Law, 1975 (Law 36/75), praying for possession of the premises.

The appellant used to pay the rent regularly and in advance on the first day of each month. In July, 1977, however, due to a misunderstanding between the parties, he started paying the rent by postal orders and as a result there was some delay in its payment. The trial Judge found that the delay was usually for about one month and on one or two occasions it lasted two months; and that the landlady complained for the delays both by means of letters and by oral messages.

The trial Judge, also, found that the respondent's acquiescence in accepting the payment of the rent from July, 1977, onwards with some delay by the appellant could not in law give rise to an estoppel or waiver so as to disable her from sending the notice of demand in question on August 4, 1978. Regarding appellant's claim for reduction of the rent by 20%, under section

* Section 16(1)(a) reads as follows:

"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:

(a) where any rent lawfully due is in arrear for twenty-one days or upwards after notice of demand in writing has been given to the tenant and there was no tender thereof before the institution of the action:

....."

15(1)* of Law 36/75 (as amended by Law 24/77) the trial Judge, after examining the financial position of the appellant, found that though immediately after the invasion the appellant became substantially affected within the meaning of the said section 15 his financial position improved by the 1st April, 1977 and ceased to be affected.

Upon appeal by the tenant against an order for possession Counsel for the appellant contended:

(a) That the letter of August 4, 1978 did not constitute the notice of demand in writing envisaged by section 16(1)(a) of Law 36/75 because, in drafting such a notice to his tenant, a landlord is under an obligation to *exhibit* the utmost good faith as the relationship between landlord and tenant in a statutory tenancy is one of uberrimae fidei; and that the respondent was in breach of her duty because the said letter was misleading and could not have the effect of putting the appellant on his guard as the respondent failed to give a warning for the legal consequences for the non payment of the rent and made no call for immediate payment.

(b) That the trial Judge wrongly and/or contrary to law found that the rent mentioned in the notice of demand was lawfully due because the tenant's obligation to pay the rent in advance on the first day of each month was varied in a way entitling the appellant to pay the rent with delay and because estoppel or, alternatively, waiver, precluded the respondent from insisting on the right of payment of rent in advance.

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* Section 15(1), so far as relevant, reads as follows:

"15.(1) During the abnormal situation and in any case not later than the thirty-first December, 1975, all the rents payable for premises shall be reduced by twenty per cent as from the twentieth July, 1974, and the tenant shall pay as from that date, the sum so reduced in full satisfaction of his liabilities towards the landlord:

.....

Provided further that nothing in this section contained shall apply:

(a) unless the tenant is proved to have been substantially affected by the abnormal situation and continues to be so affected, provided that the displaced tenant is presumed to have been so affected and continues to be affected.

.....".

(c) That the trial Judge wrongly and/or contrary to law found that the appellant was not substantially affected by the emergency as from the 1st April, 1977, onwards and consequently not entitled to the 20% reduction of the rent payable as provided by section 15 of Law 36/75.

Held, (1) that from the wording of section 16(1)(a) of Law 36/75 it becomes apparent that the notice mentioned therein need not be drafted in any particular form or that the word demand has to be used; that a demand may be expressed in a a courteous way and when a landlord requests payment of the rent due, he is doing nothing else but demand payment of same; that it is enough if the wording of such a notice constitutes a reminder to the tenant that he is in arrear of rent lawfully due and that he is expected to pay same; that the legal consequences of its non-payment after the lapse of 21 days from such notice, are laid down in the law which everyone is presumed to know; that no warning of any kind for such consequences or of the intention of a landlord to exercise his rights under the law need be included in the notice, nor is it in law necessary to specify therein that such a notice is sent pursuant to the Rent Control Law; that the way the aforesaid notice of demand in writing was drafted, in the present case, gave to the tenant all necessary information and conveyed to him the message that the law demands of a landlord to give to a tenant before the former is entitled to take legal steps for recovery of possession for the non-payment of rent; that, therefore, no question of a breach of a duty of disclosure on the principle of uberrimae fidei relationship comes into play; and that, accordingly, contention (a) must fail.

(2) (*After stating the law governing the principles of promissory estoppel and waiver—vide pp. 527-9 post*) that there has been neither a variation of agreement nor words or conduct on the part of the respondent to bring into existence in the relations between her and the appellant the principles of waiver and estoppel; that her mere forbearance on some occasions to insist on her rights under section 16(1)(a) of Law 36/75 cannot constitute the factual basis for any of the aforesaid legal situations whereby she would be precluded from saying that when the notice prerequisite to the filing of the present proceedings was sent the rent was lawfully due and remained so until the filing

of the present proceedings; and that, accordingly, contention (b) must fail.

(3) (*After dealing with the meaning of the expression* "has been substantially affected by the abnormal situation" in paragraph (a) of the second proviso to section 15(1) of Law 36/75 (as amended by Law 24/77) and adopting the construction given in *Loizides* v. *Ktimatiki Eteria Chr. Pantzaris Ltd.* (1975) 1 C.L.R. 333 and *Orphanides* v. *Shiambela* (1975) 1 C.L.R. 340) that the question whether a tenant has been substantially affected or continues to be so affected by reason of the abnormal situation in a question of fact depending on the circumstances of each case and this is primarily a function of Courts of first instance; that the approach of the trial Judge, both with regard to the law applicable and the factual aspect, to the effect that by the 1st April, 1977 the appellant had ceased to be affected substantially by reason of the invasion and could not, having in mind the amendment introduced by Law 24/77, claim any reduction of his rent under section 15 was correct; and that, accordingly, contention (c) must, also, fail.

Appeal dismissed.

Cases referred to:

Hadji Yiannis v. *Attorney-General of the Republic* (1970) 1 C.L.R. 32 at pp. 48, 49;

Central London Property Trust Ltd. v. *High Trees House Ltd.*, [1947] K.B. 130;

Tankexpress A/S v. *Compagnie Financière Belge Des Petroles S.A.* [1949] A.C. 76;

W.J. Alan & Co. Ltd. v. *El Nasr Export and Import Co.* [1972] 2 All E.R. 127;

Loizides v. *Ktimatiki Eteria Chr. Pantziaris Ltd.* (1975) 1 C.L.R. 333 at pp. 336, 337;

Palser v. *Grinling* [1948] 1 All E.R. 1;

Woodward v. *Docherty and Another* [1974] 2 All E.R. 844;

Orphanides v. *Shiambela* (1975) 1 C.L.R .340.

Appeal.

Appeal by the tenant against the judgment of the District Court of Nicosia (Boyiadjis, S.D. J.) dated the 9th May, 1979 (Rent. Appl. No. 728/78) whereby he was ordered to evacute and

deliver vacant possession of a house situate at Ayii Omoloyitae Nicosia on or before the end of July, 1979.

P. Lysandrou, for the appellant.

Ant. Georghiades, for the respondent.

A. Loizou J. gave the following judgment of the Court. This is an appeal from the judgment of the District Court of Nicosia, whereby the appellant was ordered to evacuate and deliver to the respondent vacant possession of a house situate at No. 14 Ikaros Street, Ayii Omologitae, Nicosia, on or before the end of July 1979, and was also adjudged to pay two thirds of the costs of the respondent.

This order to evacuate the premises in question which were protected premises and there is no dispute about it, was made under section 16(1)(a) of the Rent Control Law 1975 (Law No. 36 of 1975) as the rent which was lawfully due was in arrears for twenty one days or upwards, after notice of demand in writing had been given to the tenant and there was no payment or tender thereof before the institution of these proceedings.

The appellant whose wife is the sister of the respondent, moved into the house on or about the 10th September, 1975, at the agreed rent of C£30.—per month. He paid C£20.—on the commencement of the tenancy for the twenty days of September and thereafter he kept paying the rent regularly and in advance on the first day of each month. This continued until July 1977 when due to a misunderstanding between the two families, the respondent demanded that herself and not the appellant should in future draft the receipt which she signed for the payment of the monthly rent. This apparently caused friction and the appellant started paying the rent by postal orders sent through the post. There was, however, some delay in effecting in this way the payment of rent, which was not always the same. On this point the learned trial Judge summed up the position as follows:-

> " According to the evidence of the tenant which I accept on this matter, the delay was usually for about one month and on one or two occasions it lasted two months. The tenant added that sometimes he used to send the rent on the 28th day of the month because, as he said, that was the time when he used to get his pension. The tenant

conceded that at least on one occasion the landlady, who was and continues to be not on speaking terms with him, telephoned to him and complained for his delay in the payment of his rent and asked him to pay what was in arrear. The tenant explained to her that he had financial difficulties and his intention was to pay the rent in arrear as soon as possible. The landlady alleged in her evidence that she also sent to him oral messages of indignation for his delays through her sisters Margarita and Efthymia and after December, 1977, with her third sister—his wife, with whom she had by then reconciled. The tenant denied that he ever received any of these messages. I believe the landlady's evidence on this matter and treating the tenant's wife as his agent in the circumstances of this case, I consider the landlady's representations to her in this respect as made to the tenant himself. No other steps were taken by the landlady to put an end to the tenant's repeatedly falling in arrear in the payment of his rent other than two letters which she addressed to him on the 3rd July, 1978, and on the 21st July, 1978, which have been produced in Court and are now *exhibits* 1 and 3 before me.

I have no difficulty whatsoever to decide that the evidence before me does not in any way substantiate the allegation that the agreement has been varied as alleged by the tenant or at all. The rent for any given month was, with the exception of two single instances, paid by the tenant on a day of the month in question. The acceptance, by the landlady on those two unspecified occasions of the rent on a day during the month following that in respect of which it was due cannot amount to an agreed variation of the relevant term of the tenancy, giving the tenant the right to pay the rent for any particular month after the end of that month".

The rent for the month of July 1978 had not been paid and on the 4th August the respondent addressed to the appellant the following letter:-

" .....

You are requested to pay me the amount of C£30.— (thirty pounds), that is the rent of the month of July 1978

in respect of my house situate at Ikaros No. 14 Street, Nicosia.

I remain,

(sgd) ".

The rent of July remained in arrear for more than 21 days from the 5th August, when the aforesaid letter was admittedly received by the appellant, namely, until the 28th August, when the respondent filed her application and there had been no tender thereof at any time prior to that date.

It was the case for the appellant that the aforesaid letter did not constitute the notice of demand in writing envisaged by section 16(1)(a) of the Law and which is one of the prerequisites for the making of an order for the recovery of possession of protected premises. The argument advanced was that a landlord is under an obligation to *exhibit* the utmost good faith in drafting such a notice of demand to his tenant as the relationship between landlord and tenant in a statutory tenancy is one of uberrimae fidei. In this respect the respondent was in breach of her duty inasmuch as the aforesaid letter was misleading and could not have the effect of putting the appellant on his guard. The reasons advanced were that there was: (a) no call in the said notice for immediate payment of the rent in arrear; (b) no warning for the legal consequences for the non payment of the rent within 21 days from such notice upon the tenant and a statement about the legal steps to be taken in case of such default; and (c) no mention therein that it was being sent pursuant to the Rent Control Law of 1975.

From the wording of section 16(1)(a) of the Law, it becomes apparent that such a notice need not be drafted in any particular form or that the word "demand" has to be used. A demand may be expressed in a courteous way and when a landlord requests payment of the rent due, he is doing nothing else but demand payment of same. It is enough if the wording of such a notice constitutes a reminder to the tenant that he is in arrear of rent lawfully due and that he is expected to pay same. The legal consequences of its non-payment after the lapse of 21 days from such notice, are laid down in the Law which everyone is presumed to know. No warning of any kind for such consequences or of the intention of a landlord to exercise his rights under the Law need be included in the notice, nor is it in law

necessary to specify therein that such a notice is sent pursuant to the Rent Control Law.

If any other interpretation was given to the said statutory provision, it would amount reading into it words which the legislator did not choose to include. In our view the way the aforesaid notice of demand in writing was drafted in the present case, gave to the tenant all necessary information and conveyed to him the message that the Law demands of a landlord to give to a tenant before the former is entitled to take legal steps for recovery of possession for the nonpayment of rent, and no question of a breach of a duty of disclosure on the principle of uberrimae fidei relationship comes into play. This ground of appeal therefore fails.

The next ground of appeal was that the trial Judge wrongly and/or contrary to Law found that the rent mentioned in the notice of demand was lawfully due and/or in arrear when same was sent to the appellant.

This is based on a twofold argument, the first one is that there had been, as alleged by the appellant, a variation of the contractual tenancy regarding the time when the monthly rent became due and payble by the tenant. That is to say that his obligation to pay the rent in advance on the first day of each month was varied in a way that the appellant, as he maintained, acquired the right to pay the rent with delay, the length of which varied from one to two months from the date when it was originally due and payable. The second argument is that estoppel or alternatively waiver, precluded the respondent from insisting on the right of payment of rent in advance on the first day of each month.

In referring to the facts of the case we have seen that the trial Judge decided that the evidence before him did not in any way substantiate the allegation that the tenancy agreement between the parties had been varied as alleged by the appellant or at all.

The doctrine of promissory estoppel was examined by this Court in the case of *Hadji Yiannis* v. *The Attorney-General of the Republic*, (1970) 1 C.L.R., p. 32, at pp. 48 and 49. As stated in the aforesaid judgment, at p. 48: "The doctrine of promissory estoppel is to the following effect, that is to say,

where by his words or conduct one party to a transaction makes to the other a promise or assurance which is intended to affect the legal relations between them and the other party acts upon it altering his position to his detriment, the party making the promise or assurance will not be permitted to act inconsistently with it". An impressive list of English authorities is given therein including, *inter alia*, the case of *Central London Property Trust Ltd.* v. *High Trees House Ltd.* [1947] K.B., 130, as well as the case of *Tankexpress A/S* v. *Compagnie Financière Belge Des Petroles S.A.*, [1949] A.C., 76.

The trial Judge made reference also to the case of *High Trees House Ltd.* [1947] K.B. 130 and to the case of *W. J. Alan & Co. Ltd.* v. *El Nasr Export & Import Co.* [1972] 2 All E.R., 127. He then went on to say the following:

" What is the conduct of the landlady relied upon by the tenant as giving rise to a waiver or estoppel in the present case? The evidence is that from July, 1977, onwards he was in arrear in the payment of his rent for each month and in each case the landlady accepted payment thereof. The arrear was mostly for 28 days, i.e. towards the end rather than the beginning of any given month. On two occasions the rent was paid next month. There is no evidence whether these two occasions refer to any two consecutive months or not. There is no evidence when anyone of these two occasions occurred. Now she has sent the notice of demand in writing in question on the 4th August, 1978, in relation to the rent for the month of July, 1978, alleging that it was lawfully due to her. In my judgment the landlady's acquiescence in accepting the payment of the rent from July, 1977, onwards with some delay by her tenant cannot in law give rise to an estoppel or a waiver so as to disable her from sending the notice of demand in question on the 4th August, 1978. Even if such estoppel or waiver could have in law arisen, which is not the case, the landlady would have been entitled, in the circumstances of this case, to revoke or abandon her past acquiescence at will or on giving reasonable notice to the tenant. I would have treated in such a case the landlady's letter to the tenant dated 21st July, 1978, *exh.* 3, as affording the required reasonable notice to the latter of her intention to revert to her strict legal rights under her contract.

My opinion that no estoppel or waiver can arise in the present case finds support in the authority of *Bird* v. *Hildage* [1947] 2 All E.R., p. 7.

In the case of *Bird* just referred to, it was held that:

(i) Where an act has to be done periodically, the fact that it has been done irregularly in the past does not, unless a variation of the agreement can be inferred, justify the assumption that the irregularity will be waived in the future, and, therefore, the landlord was entitled to take advantage of the nonpayment of rent by the tenant although he had not given the tenant notice that he was going to insist in the future on the punctual fulfilment of the contract;

(ii) Even if, as a result of his forbearance in permitting irregularities, a landlord was disabled from terminating a contractual tenancy without first giving notice of his intention so to do, it did not follow that such forbearance ousted the jurisdiction of the Court to give possession under the Rent and Mortgage Interest Restrictions (Amendment) Act 1933, Schedule 1, para. (a) unless the circumstances amounted to a variation of the terms of the tenancy."

On these findings of fact and guided by the law as briefly summed up earlier in this judgment, the trial Judge rejected the tenant's plea of estoppel and waiver.

Having given due consideration to the arguments advanced by counsel on both sides, we have come to the conclusion that on the facts of the present case and on the law as it stands, this ground of appeal must also fail. There has been neither a variation of agreement nor words or conduct on the part of the respondent to bring into existence in the relations between her and the appellant the principles of waiver and estoppel. Her mere forbearance on some occasions to insist on her rights under section 16(1)(a) of the Law cannot constitute the factual basis for any of the aforesaid legal situations whereby she would be precluded from saying that when the notice prerequisite to the filing of the present proceedings was sent, the rent was lawfully due and remained so until the filing of the present proceedings.

The next ground of appeal was that the trial Judge wrongly and/or contrary to law found that the appellant was not substantially affected by the emergency as from the 1st April, 1977, onwards and consequently not entitled to the 20% reduction of the rent payable as provided by section 15 of the Law. The effect of claiming entitlement to the benefits of the said section would have been, had the appellant been successful on this point, that no rent was due by him as the amounts he would have been entitled thereunder would have exceeded the rent of July 1978.

Section 15 of the Law, as amended by the Rent Control (Amendment) Law, 1977 (Law No. 24 of 1977) reads as follows:-

" (1) During the abnormal situation and in any case not later than the thirty-first December, 1975, all the rents payable for premises shall be reduced by twenty per cent as from the twentieth July, 1974, and the tenant shall pay as from that date, the sum so reduced in full satisfaction of his liabilities towards the landlord:

Provided that such reduction shall not apply to any rents which at the date of the coming into operation of this Law, are paid under the provisions of:

(a) the Rent (Control) Law as applied before the 30th August, 1974; or

(b) the Rent Control (Business Premises) Law, save where the rent of the business premises is higher than the one paid before the 31st December, 1969; or

(c) the Depressed Tenants Relief Law; or

(d) any contract of tenancy made after the 31st December, 1976.

Provided further that nothing in this section contained shall apply:

(a) unless the tenant is proved to have been substantially affected by the abnormal situation and continues to be so affected, provided that the displaced tenant is presumed to have been so affected and continues to be affected.

.....

or

(b) where the landlord is proved to have been substantially affected by the application of the provisions of this Law in consequence of the abnormal situation; or

(c) where the tenant of the dwelling house is not a Cypriot permanently residing in Cyprus".

There were several enactments between 1975 and 1977 which extended the duration of the application of the provisions of section 15, but it was by the aforesaid last amendment that the present appellant became eligible to claim the benefit of the 20% reduction of his contract rent provided of course that he would prove to have been substantially affected by the abnormal situation.

The meaning of the word "substantial" was examined in the case of *Achilleas Loizides* v. *Ktimatiki Eteria Chr. Pantziaris Ltd.* (1975) 1 C.L.R., p. 333, where at pages 336, 337, by reference to the cases of *Palser* v. *Grinling* [1948] 1 All E.R. 1, and *Woodward* v. *Docherty & Another* [1974] 2 All E.R. 844, 846, Triantafyllides P., in delivering the judgment of the Court at p. 336, says:-

> "..... we have taken the view that the expression 'has been substantially affected by the emergency' in section 5(1)(b) of Law 51/74 conveys the notion of a substantial worsening of the financial position as a whole of a tenant, as a result of factors attributable to the emergency created by the Turkish invasion of our country, and in a way affecting his capability to pay the full rent provided for under the terms of the tenancy; all the relevant, in this connection, factors have to be weighed together, without excluding from consideration anything which is attributable to the said emergency and has affected the tenant's financial capacity".

Also in the case of *Andreas Orphanides* v. *Ivi Ch. Shiambela* (1975) 1 C.L.R., p. 340, again a case turning on the meaning of the words "substantially affected" to be found in the same section referred to in the *Loizides* case (*supra*), this Court adopting what was said in the *Loizides case*, had this to say at page 341:-

" ..... Law 51/74 should be applied with an approach suited for achieving its object and it would amount to ignoring the realities of the matter before us if we were not to take into account that the appellant, as the head of his family and the person responsible for their expenses, has, indeed, suffered, in effect, himself financial loss,.....".

We see no reason why the words "substantially affected" in section 15 of the Law hereinabove set out should not be construed in the same way. Moreover, the question whether a tenant had been substantially affected or continues to be so affected by reason of the abnormal situation is a question of fact depending on the circumstances of each case, and this is primarily a function of Courts of first instance.

The trial Judge went through the evidence and examined the financial position of the appellant analysing the various heads of income as well as the income from the property of the wife of the appellant which was in the region of C£43.—per year; the figure arrived at as representing the average yearly income of the appellant immediately prior to the invasion was C£1,116.—or C£93.—per month.—He further found that immediately after the invasion and as a result thereof, the appellant became substantially affected within the meaning of section 15 of the Law, but his financial position improved and on the evidence before him he reached the conclusion that by the 1st April, 1977, the appellant had ceased to be affected substantially by reason of the invasion and could not, therefore, having in mind the amendment of Law 24/77, which requires that a tenant to be eligible must not only prove that he has been substantially affected by the invasion, but that he continues to be so affected, claim any reduction of his rent under section 15 of the Law.

On this last ground we find that the approach of the trial Court was correct, both with regard to the law applicable and the factual aspect of the case and we see no reason to interfere with the aforesaid conclusion reached by him.

For all the above reasons this appeal is dismissed with costs, but we feel that we should grant a stay up to the 30th September, 1979, provided the appellant pays in advance the mesne profits at the rate of the monthly rent so far paid.

Appeal dismissed with costs.