1978 September 18

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

ANDREAS ANTONIADES,

Appellant,

v.

MARIA CHR. PANTELI AND ANOTHER,

Respondents.

(Civil Appeal No. 5833).

Landlord and tenant—Statutory tenancy—Recovery of possession—Premises reasonably required by landlord for own use—Section 16(1)(*g*) *of the Rent Control Law,* 1975 (*Law* 36/75)*—Matters for consideration—Balance of comparative hardship—Alternative accommodation—Fact that premises bought after the coming into force of said Law* 36/75 *and whilst being possessed under a statutory tenancy—Finding of trial Judge on issue of balance of hardship and exercise of his discretion—Approach of Court of Appeal.*

Landlord and tenant—Statutory tenancy—Order for recovery of possession—Staying effect of—Length of period—Wrong exercise of discretion by trial Judge as to—Rent Control Law, 1975 (*Law* 36/75) *section* 16(2).

On April 11, 1978, the respondents, who are husband and wife, were granted possession of a dwelling house in Nicosia, under section 16(1)(g) of the Rent Control Law, 1975 (Law 36/75) on the ground that they reasonably required it for use as their residence. The execution of the order of possession was stayed for a period of five months.

The house in question was bought by respondents in July, 1977, that is well after the enactment of Law 36/75, and was at the time, to their knowledge, being possessed by the appellant as a statutory tenant.

Respondent 2 was earning C£120 a month but his wife did not work. He sold his house at Mammari, because it was very near to the positions of the Turkish Army and bought the

dwelling house in question for C£8,000 and had to pay off, by monthly instalments of C£70, a debt which he has had to contract in this respect. He was residing in an outbuilding in the backyard of another house, consisting of two bedrooms, kitchen and bathroom, at a monthly rent of C£25. He was using only one of the two bedrooms, while the parents of respondent 1 resided in the other. The owner of the said outbuilding sent a notice, on December 10, 1977 requiring the respondents to evacuate it but he has not yet instituted proceedings for recovery of possession.

The appellant (tenant) was a retired policeman and a cripple, in the sense that he had an artificial foot. He received a pension of C£76 per month, out of which he had to pay C£3 monthly by way of income tax. He was married with two children; one of them was a minor daughter, and the other a son who was engaged to be married and resided with his father together with his fiancee. Appellant's wife worked and earned some income of her own.

The trial Judge found that respondent 2 bought the said premises because he had to find accommodation for himself and his family. He further found that, on the basis of the evidence before him, greater hardship would be caused to the respondents if he had refused to make the order for possession, rather than to the appellant if he would make the said order, and said that he had taken duly into account the factor of alternative accommodation for the appellant, and, also, the fact that the respondents had bought the premises on a date after Law 36/75 had come into force. Regarding the aspect of alternative accommodation the trial Judge found that there was no alternative accommodation immediately available for the appellant, but that he could find such accommodation with a little effort and if he would pay a higher than C£13 per month rent.

The tenant appealed.

On the question whether or not, in the light of all relevant considerations, including the availability of alternative accommodation for the parties, the fact that the premises were bought by the respondents after the coming into force of Law 36/75, and the balance of relative hardship in general, it was reasonable for the trial Judge to make the order for possession:

Held, (1) that the appropriate test, when examining on appeal the decision of a trial Judge as regards the balance of hardship, is to consider whether there was evidence on which the trial Judge could come to the conclusion that there would be greater hardship in making the order than not making the order; that, save in most exceptional cases, the question of comparative hardship is essentially one for the trial Judge; and that the burden is on the tenant to show that there is greater hardship on him by having to move.

(2) That the trial Judge has not misdirected himself in law, in any way, in approaching the aspect of alternative accommodation and that his findings, in this respect, were reasonably open to him on the evidence adduced at the trial.

(3) That the factor that the premises were bought by the respondents after the coming into force of Law 36/75, and while the appellant was residing in them as a statutory tenant was given due weight; that in the light of the particular circumstances of this case, it was properly open to the trial Judge not to treat it as a decisive factor in the sense of preventing the respondents from succeeding in obtaining possession of the premises.

(4) That, therefore, the trial Judge has exercised his discretionary powers in a proper manner in reaching the conclusion that it was reasonable for him to make an order for possession as applied for by the respondents and that his approach to the issue of comparative hardship was properly open to him.

(5) That as this was a case where the appellant, in view of his rather limited financial means and his infirmity, did need quite a lengthy period of time in order to be able to find suitable alternative accommodation, it was wrong in principle to stay the effect of the order for possession for five months only, that is for even less than half the period envisaged under section 16(2) of Law 36/75; that, in this respect, the Judge has erred in the course of exercising his discretion as regards this aspect of the case and that this is, indeed, an instance in which the evicted tenant should have the full benefit of the year's period under section 16(2); and that, accordingly, the enforcement of the eviction order is suspended for a period of a further seven months.

Appeal partly allowed.

Cases referred to:

Chandler v. *Strevett* [1947] 1 All E.R. 164;

Kelley v. *Goodwin* [1947] 1 All E.R. 810 at p. 812;

Sims v. *Wilson* [1946] 2 All E.R. 261 at p. 264;

Coplans v. *King* [1947] 2 All E.R. 393 at p. 394;

King v. *Taylor* [1954] 3 All E.R. 373 at pp. 374, 375;

Piper v. *Harvey* [1958] 1 All E.R. 454 at p. 457;

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

Cresswell v. *Hodgson* [1951] 1 All E.R. 710 at pp. 712–713.

Appeal.

Appeal by the tenant against the order of the District Court of Nicosia (Papadopoulos, S.D.J.) dated the 11th April, 1978, (Application No. 350/77) whereby he was ordered to deliver vacant possession to the landlords of a dwelling house in Nicosia.

C. Velaris, for the appellant.

P. Ioannides, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment of the Court: The appellant appeals against the order of the District Court of Nicosia, dated April 11, 1978, ordaining that he should deliver vacant possession to the respondents of a dwelling-house in Nicosia, of which he is admittedly the statutory tenant in the sense of the relevant provisions of the Rent Control Law, 1975 (Law 36/75).

When the said order was made its execution was stayed for a period of five months which has expired on September 10, 1978.

The respondents applied for, and were granted, possession of the premises in question under section 16(1)(g) of Law 36/75, on the ground that they reasonably require them to use them as their residence.

It is a fact that the respondents, who are husband and wife and have a minor child five years old, bought the said premises in July 1977, that is well after the enactment of Law 36/75, and, at the time, they knew that they were being possessed by the appellant as a statutory tenant.

It is not in dispute that the respondents reasonably require

the premises concerned for use as a residence; what has been hotly contested is whether or not, in the light of all relevant considerations, including the availability of alternative accommodation for the parties, the fact that the premises were bought by the respondents after the coming into force of Law 36/75, and the balance of relative hardship in general, it was reasonable for the trial Judge to make the order for possession applied for by the respondents.

The trial Court accepted the evidence of respondent 2 who stated that he is employed by Cyprus Airways, Limited, at Larnaca, and that he earns C£120 per month; that his wife does not work; that he had a house at Mammari village which he had to sell because it was very near to the positions of the Turkish Army which has invaded and occupied the northern part of Cyprus since 1974; that he sold his said house for C£5,000 and that he had bought the premises which are the subject matter of these proceedings for C£8,000 and has to pay off, by monthly instalments of C£70, a debt which he has had to contract in this respect; and that he is, for the time being, residing in an outbuilding in the backyard of another house which consists of two bedrooms, kitchen and bathroom, and that he pays for this accommodation C£25 per month. Moreover, the trial Judge has accepted as established that the respondents use only one of the two bedrooms, while the parents of respondent 1 reside in the other, and that the owner of the said outbuilding has sent a notice, on December 10, 1977, requiring the respondents to evacuate it, but he has not yet instituted proceedings by which to claim an order for possession of such premises.

As regards the purchase by the respondents of the premises in which the appellant now resides, the trial Judge made an express finding that respondent 2 bought them because he had to find accomodation for himself and his family.

The appellant is a retired policeman and a cripple, in the sense that he has an artificial foot. He receives a pension of C£76 per month, out of which he has to pay C£3 monthly by way of income tax; he is married with two children; one of them is a minor daughter, sixteen years old, and the other a son who, having become of age, is now engaged to be married and resides with his father together with his fiancee.

The trial Judge was inclined to believe the appellant that he

received a gratuity of only C£2,000 when he retired from the Police, and not C£4,000 as alleged by the respondents. He found, however, that the appellant is the owner of immovable property at Lakatamia, which the Judge described as being of some considerable value, though the appellant in his evidence disputed that such property was really valuable.

The trial Judge, also, found that the wife of the appellant works and earns some income of her own; in this respect the appellant denied, initially, in his evidence that his wife is working at all, but then admitted that she has been working on and off on a part-time basis.

The dwelling house in which the appellant resides consists of two bedrooms, a hall, a living and dining-room, a bathroom and a kitchen, and the appellant was paying to the previous owner, by way of rent, C£13.600 mils per month; the respondents received this rent for a few months after they bought the premises and then they refused to accept it any longer on the ground that it was too low.

Respondent 2, whose evidence was believed by the trial Judge, testified that when he bought the premises in question he told the appellant that he wanted him to evacuate them on the first opportunity, because he needed them for himself, and that the appellant told him that he would try to find another house in order to move and asked respondent 2 to help him in this respect; this respondent went on to state, further, in his evidence that he found two houses as alternative accommodation for the appellant, but he did not agree to move to either of them, because the rent demanded by their owners was C£25 and C£30 per month, respectively, and he could only pay C£13 per month. On the other hand, the appellant in his evidence stated that one of the said two houses was suitable, but too expensive, in that he could not pay C£30 per month rent, whilst the other one was unsuitable, because the bathroom and the toilet were outhouses and he could not use them in view of the fact that he is a cripple.

The trial Judge found that, on the basis of the evidence before him, greater hardship would be caused to the respondents if he had refused to make the order for possession, rather than to the appellant if he would make the said order, and said that

he had taken duly into account the factor of alternative accommodation for the appellant, and, also, the fact that the respondents had bought the premises on a date after Law 36/75 had come into force. Regarding the aspect of alternative accommodation the Judge found that there was no alternative accommodation immediately available for the appellant, but that he could find such accommodation with a little effort and if he would pay a higher than C£13 per month rent.

It has been submitted by counsel for the appellant that the trial Judge erred as regards his approach to the issue of the balance of hardship, and that he, therefore, exercised his relevant discretion wrongly.

It is useful to examine what should be the approach of an appellate tribunal to the finding of a trial Judge, in a case of this nature, regarding the issue of the balance of hardship; and it is pertinent to refer to English case-law in relation to the application of legislative provisions in England corresponding to our own section 16(1)(g) of Law 36/75:

In *Chandler* v. *Strevett*, [1947] 1 All E.R. 164, Scott L.J. observed (at p. 165) that in relation to the balance of hardship the task of the trial Judge "involves making very human estimates of comparative values on which widely divergent views may be taken by any two human minds" and then proceeded to pose the question whether the Parliament had intended "to leave that very difficult task in its entirety and finally to the county Court Judge to the exclusion of the Court of Appeal and even of the House of Lords, and, if not, where did it draw the line?"; and it appears, from later case-law, that the appropriate test, when examining on appeal the decision of a trial Judge as regards the balance of hardship, is to consider "whether there was evidence on which the county Court Judge could come to the conclusion that there would be greater hardship in making the order than not making the order" (per Lynskey J. in *Kelley* v. *Goodwin*, [1947] 1 All E.R. 810, 812; and to the same effect is, also, the case of *Sims* v. *Wilson*, [1946] 2 All E.R. 261, 264).

In *Coplans* v. *King*, [1947] 2 All E.R. 393, Lord Greene M.R. said (at p. 394):-

> "That is sufficient to dispose of the appeal, but counsel mentioned another argument, namely, the question of com-

parative hardship under the proviso to sched. I to the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933. He agrees that, if that had arisen, the only ground on which he could succeed in displacing the finding of the county Court Judge would be by relying on the dicta of SCOTT, L.J., in *Chandler* v. *Strevett**. Those dicta were not repeated by either of the two Lords Justices who sat with SCOTT, L.J., on that appeal, and, if I may say so with great respect to SCOTT, L.J., I should require a great deal of persuasion to be induced to follow them. He asks the question ([1947] 1 All E.R. 165): 'Did Parliament intend to leave that very difficult task'—*i.e.*, the task of estimating the comparative hardship on either side—'in its entirety and finally to the county Court Judge to the exclusion of the Court of Appeal and even of the House of Lords?' With the greatest possible deference, I should have thought that that is the very thing that Parliament did intend in view of the class of persons that the statute was intended to benefit. The idea that the question of comparative hardship could be litigated up to the House of Lords appears, again with the greatest deference, to be one which, I should have thought, was clearly contrary to the intention of Parliament. Of course, if in a case there is evidence of hardship on one side and none on the other, the county Court Judge can come to only one conclusion, and if he finds hardship where the facts are not sufficient to constitute hardship in law—for example, something trivial, like the absence of a view of a neighbouring hill, river, tree, or something pleasant of that kind—he makes an error in law, but, once there is evidence which in law can amount to hardship on two sides. Parliament has deliberately made the county Court Judge the conclusive Judge of the fact which is the greater hardship So, with great deference to what SCOTT, L.J., said, I find myself constrained to disagree with the principle which I understand him to have suggested in that case."

The above view of Lord Greene was adopted by Sir Raymond Evershed M.R. in *King* v *Taylor*, [1954] 3 All E.R. 373, where he observed (at pp. 374, 375) that in the *Coplans* case (*supra*) the

* [1947] 1 All E.R. 164

Court of Appeal had "laid it down, that, save in most exceptional circumstances, the question of comparative hardship is essentially one for the county Court Judge", that is the trial Judge.

In *Piper* v. *Harvey*, [1958] 1 All E.R. 454, Lord Denning said the following (at p. 457):-

> "The burden is on the tenant to show there is greater hardship on him by having to move. The learned Judge thought that he had shown it. He said:
>
> > 'For them to obtain other accommodation is and was on the evidence apparently almost impossible unless the local authority by some miracle came to their assistance. It may be possible for them to obtain other accommodation here, but they say they cannot.'
>
> The question for this Court, which is not an easy one, is whether that is a reasonable and possible conclusion for the county Court Judge to come to having regard to all the evidence. It is undoubtedly the law that if it is just a matter of weighing the balance of hardship, that is a matter for the Judge himself who hears the case, and is not a matter in which this Court can interfere. This Court can only interfere if on all the evidence there is only one reasonable conclusion to be reached, or, alternatively, if the Judge has misdirected himself on the facts or on the evidence. Here it is a very close thing. However, when I look at all the evidence in this case and see the strong case of hardship which the landlord put forward, and when I see that the tenant did not give any evidence of any attempts made by him to find other accommodation, to look for another house, either to buy or to rent, it seems to me that there is only one reasonable conclusion to be arrived at, and that is that the tenant did not prove (and the burden is on him to prove) the case of greater hardship. Although it is very rarely that this Court interferes in a hardship case, this does seem to me to be a case in which only one conclusion is possible."

Also, in the same case Hodson L.J. said (at p. 458):-

> "Certain observations of SCOTT, L.J., in another case, *Chandler* v. *Strevett* (2) ([1947] 1 All E.R. 164) were criticised

in *Coplans* v. *King* (1) ([1947] 2 All E.R. at p. 394). The two other members of the Court in *Chandler* v. *Strevett* (2), BUCKNILL, L.J., and SOMERVELL, L.J., had to deal with a similar problem; and at the outset of his judgment, BUCKNILL, L.J., said ([1947] 1 All E.R. at p. 166) what I think LORD DENNING has just pointed out, and what I feel myself:

> 'This appeal raises the difficult question whether there was any evidence on which the Judge could come to the conclusion from which the appeal has been made.'

SOMERVELL, L.J., at the end of his judgment (ibid., at p. 168) came to the conclusion which I have reached in this case, namely, that there is really 'only one possible answer on the issue of greater hardship', and in this case that is in favour of the landlord."

Before pronouncing, in the light of the foregoing, on whether in the present case it would be open to us to interfere with the finding of the trial Judge regarding the balance of hardship, it is necessary to refer to some specific aspects of the present case which are related to the issue of such balance:

It has been contended by counsel for the appellant that the trial Judge has approached wrongly the question of the alternative accommodation; and he has submitted that, in fact, no alternative accommodation was shown to be available for the appellant, as the tenant, at the time when the appealed from order for possession was made. We do not think that this should have proved fatal to the claim of the respondents, so so long as the Judge has found—(and it was reasonably open, in our view, to him to find so)—that the appellant could secure alternative accommodation with a little effort and if he paid a somewhat higher rent than what he was paying for the premises which are the subject matter of these proceedings.

As it is to be derived from the *Chandler* case, *supra*, the factor of alternative accommodation is one of the matters to be considered together with all the other circumstances of a particular case in order to reach a conclusion regarding the balance of hardship; and, this is, also, clearly the effect of the provisions of section 16(1)(g) of Law 36/75.

In connection, particularly, with the question of alternative accommodation for the appellant, as a statutory tenant, we have been referred by his counsel to the case of *Cumming* v. *Danson*, [1942] 2 All E.R. 653; a mere perusal of the report of that case shows that there the Court of Appeal in England intervened because the trial Judge had misdirected himself in law; as it was aptly, even though perhaps harshly, put by Scott L.J. (at p. 657) "there is hardly a sentence expressing a legal opinion in the judgment with which I do not disagree."

In the present instance we do not think that the trial Judge has misdirected himself in law, in any way, in approaching the aspect of alternative accommodation and we are of the view, as already indicated earlier on in this judgment, that his findings, in this respect, were reasonably open to him on the evidence adduced at the trial.

The next specific matter with which we have to deal is the factor that the premises in question were bought by the respondents after the coming into force of Law 36/75, and while the appellant was residing in them as a statutory tenant:

It is clear from the contents of the judgment of the trial Court that this factor was given due weight and we are of the view, in the light of the particular circumstances of this case, that it was properly open to the trial Judge not to treat it as a decisive factor in the sense of preventing the respondents from succeeding in obtaining possession of the premises; it is to be borne, especially, in mind, in this respect, that it is in evidence that when the appellant was informed that the respondents had bought the premises with the intention of residing in them when the appellant would find other accommodation he agreed to try to do so, and asked, also, the assistance of the respondents in this connection.

We have, therefore, reached the conclusion, in the light of what we have stated in this judgment, that in the present case the trial Judge has exercised his discretionary powers in a proper manner in reaching the conclusion that it was reasonable for him to make an order for possession as applied for by the respondents; and, also, that his approach to the issue of comparative hardship was properly open to him.

In this respect, it is useful to bear in mind the following pas-

sage from the judgment of Bucknill L.J. in the *Chandler* case, *supra* (at p. 166):-

> "Section 3(1) of the Rent Act, 1933, enacts that no order or judgment for the recovery of possession of any dwelling house shall be made 'unless the Court considers it reasonable to make such an order.' Was there evidence on which the Court could come to this conclusion? The question of what is reasonable in all the circumstances must be a difficult and, at times, almost insoluble, problem on which different minds may arrive at different conclusions. It seems to me, for instance, that in certain circumstances an order for possession might be reasonable although it in fact imposed greater hardship on the tenant than on the landlord. Taking all these things into consideration, I do not see how this Court can say that there was no evidence on which the Court could decide that it was reasonable to make the order giving possession to the landlord."

Also, as regards the approach of an appellate Court to the exercise of the discretion of a trial Judge in a matter of this nature useful guidance may be derived from *Cresswell* v. *Hodgson*, [1951] 1 All E.R. 710, where Somervell L.J. said (at pp. 712-713):-

> "I think that when the legislature gave this overriding discretion to the county Court Judge to consider whether it is 'reasonable to make ... an order,' it gave to the Court a very wide discretion which it is most undesirable to seek to limit or interfere with. I think the words themselves indicate that the county Court Judge must look at the effect which the order would have on each party to it. I do not see how one can consider whether it is reasonable to make an order unless one considers the effect on landlord and tenant, (a) if one makes it, and (b) if one does not. I do not think that we should say anything which restricts the circumstances which the county Court Judge should take into consideration. I think he is entitled to take into consideration that this is a case where the landlord is making a pecuniary gain. In some cases that might be a fact in the landlord's favour, and it might be thought reasonable that he should be given the chance of making pecuniary gain. During the argument I referred to another possible case, viz., where the landlord's motive is not pe-

cuniary gain for himself, but the desire to accommodate a third person who applies to him for a house, who is less well off than the tenant and whose means are more suitable for the house occupied by the tenant than for the alternative accommodation which is being offered to the tenant. Those are examples of the circumstances which the county Court Judge has to take into account. I do not think that this is a matter of law. It would not be right to say that he should exclude from his mind the fact that, in his view, it is a border-line case in regard to the question of suitable alternative accommodation, nor do I think that he is compelled by the Act to decide the matter in watertight compartments. I think that he can take all the circumstances together and exercise his discretion in the light of the whole of those circumstances. I can find nothing in this case which leads me to the conclusion that the learned Judge considered matters which, as a matter of law, he ought not to consider. He may have given to some matters more weight than we should give, or more weight than another county Court Judge would give, but that is not the question here. The question here is whether he has so plainly gone wrong in law that this Court should interfere, presumably by way of ordering a new trial. I do not think that the learned Judge misdirected himself, and, in my opinion, the appeal should be dismissed."

We are, as stated above, of the view that, in deciding that it was reasonable to grant the order for possession applied for by the respondents, the trial Judge reached a conclusion, as regards the balance of comparative hardship, which was properly open to him on the evidence adduced, and we are, therefore, not entitled, or prepared, to interfere with his judgment in favour of the respondents in this appeal. As regards, however, the period for which the trial Judge has stayed the effect of his order, we are of the opinion that, as this was a case where the appellant, in view of his rather limited financial means and his infirmity, did need quite a lengthy period of time in order to be able to find suitable alternative accommodation, it was wrong in principle to stay the effect of the order for possession for five months only, that is for even less than half the period envisaged under section 16(2) of Law 36/75; we are of the view that, in this respect, the Judge has erred in the course of exercising his discretion

as regards this aspect of the case, and we feel that this is, indeed, an instance in which the evicted tenant should have the full benefit of the year's period under section 16(2). We, therefore, suspend the enforcement of the eviction order, which we have just upheld on appeal, for a period of a further seven months, as from September 11, 1978, that is up to April 10, 1979.

In the result this appeal is partly successful, as stated in this judgment; but we order that the appellant should bear two thirds of the costs of the respondents in the appeal, as he has failed as regards the order for possession in respect to which the appeal is dismissed.

Appeal partly allowed. Order for costs as above.