1981 December 30

[LORIS, STYLIANIDES AND PIKIS, JJ.]

CHRYSTALLA DEMETRIOU AND OTHERS,

Appellants-Applicants,

v.

SAVVAS IOANNIDES,

Respondent.

(*Civil Appeal No.* 6079).

Landlord and tenant—Rent controlled premises—Owner whose contract has not been terminated or expired—Can apply to the Court for recovery of possession when the prerequisites laid down by section 16(1)(*h*) *of the Rent Control Law,* 1975 (*Law* 36/75) *exist —Sections* 7, 11 *and* 21 *of the Law.*

Landlord and tenant—Recovery of possession—Order for—Suspension —In exercising discretion whether to suspend enforcement of the order, and if so for how long, it is relevant to have regard to the existence of any arrangement between the parties, as to the length of stay—Enforcement of order of recovery of possession suspended for one year—Section 16(2) *of the Rent Control Law,* 1975 (*Law* 36/75).

Rent Control Law, 1975 (*Law* 36/75)*—Definition of "owner" in section* 2 *of the Law—Not prima facie exhaustive of who qualifies as an owner for the purposes of the Law.*

Landlord and tenant—Practice—Costs—Need not follow the event.

The respondent has since January, 1964 been the tenant of a dwelling house belonging to the appellants under a contract of lease dated 16th December, 1963. The original duration of the tenancy was one year but the lease was renewable from year to year unless terminated by a written notice. No attempt was made to terminate the agreement and the respondent

remained in occupation until the appellants applied* for recovery of possession on the ground that the premises were reasonably required for material alterations or reconstruction.

The trial Judge dismissed the application, notwithstanding his findings that the premises were required for the purposes stated by the appellants, on the ground that an owner of rent controlled premises cannot seek recovery of possession under section 16 of Law 36/75 for as long as the contractual tenancy has not been terminated. The trial Judge based his decision primarily on the definition of "owner"** in section 2 of Law 36/75 and after holding that this definition was exhaustive as to who qualifies as an owner for the purposes of the law, he concluded that inasmuch as the owner of premises leased for a period of time certain, is precluded by the contract from obtaining possession of the premises, he cannot successfully invoke the provisions of section 16.

Upon appeal by the owners:

Held, (Stylianides J. dissenting) (1) that the wording of the definition of "owner" in section 2 of Law 36/75 is not prima facie exhaustive of who qualifies as an owner for the purposes of the Law; that on the contrary the employment of the word "includes" is apparently designed to remove doubts that might otherwise exist as to the position of an owner with no amenity to recover the premises because of the provisions of the Law; and that the construction placed by the learned Judge

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* The application was based on s. 16(1)(h) of the Rent Control Law, 1975 which 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:

(h) where the dwelling house or business premises are reasonably required by the owner 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 owner 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".

** "Owner" is defined as follows by s. 2 of Law 36/75:

" 'Owner', includes, in relation to any premises, any person, other than the tenant, who is or would be, but for the provisions of this Law, entitled to possession of the premises, and in case of sub-tenancy a tenant who sublets the premises or any part thereof".

on the definition of "owner", if accepted, would create innumerable difficulties and would render, in effect, inapplicable some of the fundamental provisions of the Law, such as those of s.11.

(2) That since section 21(1)* relegates to ineffectiveness every term of a contract of lease that is not consistent with the provisions of the law any contractual term that confers a right to remain in occupation, notwithstanding the existence of one or more of the grounds set out in s. 16(1), entitling an owner to recover possession, is abrogated and consequently invalid (see the qualification imposed by section 21 with regard to the amenity of a tenant to vacate the controlled premises); that the power to order ejectment is not dependent on the rights of the owner, but on the status of the premises and the existence of the factors enumerated in the successive provisions of section 16; that since the trial Judge has found that the appellants made out their case under section 16(1)(h) the appeal must be allowed and an order of ejectment must be made; that in exercising the discretion whether to suspend the enforcement of the order and if so for how long, it is relevant to have regard to the existence of any arrangements between the parties, as to the length of stay; accordingly the enforcement of the order will be suspended for a period of one year.

(3) That in proceedings under rent control legislation costs need not necessarily follow the event (see *Katsiantonis* v. *Frantzeskou* (1981) 1 C.L.R. 566); that having regard to the proceedings in their entirty and the point raised on appeal this Court will refrain from making an order as to costs.

Appeal allowed.

Cases referred to:

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

Cumming v. *Danson* [1942] 1 All E.R. 653;

* Section 21(1) of Law 36/75 provides as follows:

"21.-(1) A tenant who, under the provisions of this Law, retains possession of any dwelling house or business premises shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this Law, and shall be entitled to give up possession of the dwelling house or business premises only on giving such notice as would have been required under the original contract of tenancy".

Briddon v. *George* [1940] 1 All E.R. 609;

Rhodes v. *Conford* [1947] 2 All E.R. 601;

Georghiades and Others v. *Lambi* (1976) 8 J.S.C. 1332;

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

Yerasimou v. *Rousoudhiou* (1974) 1 C.L.R. 107;

Meitz and Others v. *Pelengaris* (1977) 1 C.L.R. 226;

Yiannopoulos v. *Theodossiou* (1979) 1 C.L.R. 215;

Katsiantonis v. *Frantzeskou* (1981) 1 C.L.R. 566;

Ali v. *Shenikli*, 20 C.L.R. (Part II) 68;

Kontou v. *Solomou* (1978) 1 C.L.R. 425;

Heath v. *Drown* [1972] 2 All E.R. 561;

Fisher v. *Taylors Furnishing Stores Ltd.* [1956] 2 All E.R. 78;

Middle East Entertainment Co. Ltd. v. *Savvides*, 22 C.L.R. 217;

Gilbert v. *Gilbert* [1928] P. 1;

R. v. *Governor of Brixton Prison, ex parte De Demko* [1959] 1 Q.B. 268;

Becke v. *Smith* [1836] 2 M. & W. 191 at p. 195;

Luke v. *Inland Revenue Commissioners* [1963] 1 All E.R. 655 at p. 664;

Artemiou v. *Procopiou* [1965] 3 All E.R. 539 at p. 544;

Cramas Properties Ltd. v. *Connaught Fur Trimmings Ltd.* [1965] 2 All E.R. 382;

Western Bank Ltd. v. *Schindler* [1976] 2 All E.R. 393 at p. 399;

Re Maryon—Wilson's Will Trusts [1967] 3 All E.R. 636 at p. 642;

Remon v. *City of London Real Property Co. Ltd.* [1921] 1 K.B. (C.A.) 49 at p. 55;

Philips v. *Copping* [1935] 1 K.B. 15;

Regional Properties Ltd. v. *Oxley* [1945] 2 All E.R. 418;

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

William McIlroy Ltd. v. *Clements* [1923] W.N. 81 149.

Appeal.

Appeal by applicants against the judgment of the District Court of Nicosia (Fr. Nicolaides, D J) date the 26th February, 1982 (Appl. 553/79) whereby their application for the recovery

of possession of their premises at No. 7 Hadjidhakis Str. Nicosia, on the ground that the premises were required for material alterations or reconstruction, was dismissed.

S. Spyridakis, for the appellants.

A. Ladas, for the respondent.

Cur. adv. vult.

LORIS J.: The first judgment of the Court will be delivered by Pikis, J. I had the advantage of reading in advance the judgment about to be delivered, I agree with it and there is nothing I wish to add.

PIKIS J.: The appellants and the respondent are, respectively, the owners and tenant of the house at No. 7, Hadjidhakis Street, Nicosia. The respondent has been in occupation since 1.1.1964, by virtue of a contract of lease, dated 16.12.1963. The original duration of the tenancy was one year but in accordance with the terms of the agreement the lease was renewable from year to year unless terminated by a written notice in the way envisaged therein. No attempt was made to terminate the agreement, and the respondent remained in occupation until the institution of the present proceedings whereby the appellants/owners sought recovery of possession on the ground that the premises were reasonably required for material alterations or reconstruction, in accordance with a permit secured from the Nicosia Municipality.

Fr. Nicolaides, D.J., dismissed the application, notwithstanding his findings that the premises were required for the purposes stated by the owner, on the ground that an owner of rent controlled premises cannot seek recovery of possession under section 16 of the Rent Control Law 36/75, for as long as the contractual tenancy has not been terminated. The appeal turns almost exclusively on the soundness of this view of the law.

Section 16(1)(h) lays down the prerequisites for recovery of possession of premises, subject to control for purposes of reconstruction and material alterations. It is unnecessary to debate in detail these pre-conditions for, according to the findings of the trial Court, the appellants overcame the hurdles posed by law and satisfied the Court about the validity of the

claim of the appellants. However, it would not be superfluous if brief reference was made, by way of guidance, to the principles relevant to the interpretation of section 16(1)(h) for its provisions are frequently invoked by owners of immovable property for recovery of possession of rent controlled premises.

It is for the landlord to satisfy the Court that he is in need of the premises for the purposes envisaged by the law, and that the need is reasonable. Need imports a subjective element; so long as the need is genuine, the owner cannot be faulted for raising the demand, whereas reasonableness requires objective scrutiny of the need. The objective evaluation of the demand for recovery of possession must be examined from a broad common sense view point in the same vein as men of the world transact their affairs in daily life. (See, inter alia, *Chandler* v. *Strevett* [1947] 1 All E.R. 164; *Cumming* v. *Danson* [1942] 1 All E.R. 653 (C.A.); *Briddon* v. *George* [1940] 1 All E.R. 609; *Rhodes* v. *Cornford* [1947] 2 All E.R. 601 (C.A.)). Dicta in *Georghiades & Others* v. *Lambi* (1976) 8 J.S.C. 1332, shed light on the element of urgency associated with the demand necessary for sustaining the application. The need must be definite and immediate (*Andreou* v. *Christodoulou* (1978) 1 C.L.R. 192). Lastly the burden is on the owner to satisfy the Court that the formalities set out by the law as a prelude to an order for recovery, such as securing the necessary permits and giving the statutory notice, are satisfied (see, *Andreas Yerasimou* v. *Andreas Rousoudhiou* (1974) 1 C.L.R. 107). The conditions set out by the law were found to have been satisfied in this case, except that the Court held that s. 16 conferred no jurisdiction to make an ejectment order for as long as the contract between the parties subsisted. The Judge based his decision primarily on the definition of an "owner" supplied by s. 2 of Law 36/75. It is implicit from the reasoning given in support of the judgment that the definition of "owner" was held to be exhaustive as to who qualifies as an owner for the purposes of the law, notwithstanding the phraseology of the section, particularly the word "includes" that follows "owner". In accordance with this definition, the concept of an owner includes, in relation to any immovable property, a person that is entitled, or would be entitled, but for the provisions of the law, to possession of the premises. Therefore, the Judge concluded that inasmuch as the owner of premises leased for a period of time

certain, is precluded by the contract from obtaining possession of the premises, he cannot successfully invoke the provisions of s. 16. The wording of this definition is not prima facie exhaustive of who qualifies as an owner for the purposes of the law. On the contrary, the employment of the word "includes" is apparently designed to remove doubts that might otherwise exist as to the position of an owner with no amenity to recover the premises because of the provisions of the law. The construction placed by the learned Judge on the definition of "owner", if accepted, would create innumerable difficulties and would render, in effect, inapplicable some of the fundamental provisions of the law, such as those of s. 11. Section 11 provides that no owner shall have the right to ask for an order for recovery of possession of properties situated within a stricken area. If the interpretation of the trial Court was correct, then the provisions of s. 11 would be inapplicable in the case of owners with a right to recovery of possession, independent of the provisions of the law. That could not have been the intention of the legislature nor is the interpretation adopted by the trial Judge consonant with the wider aims of the law, as may be gathered from a reading of its provisions in their entirety.

I proceed to give my reasons for this view of the law.

Section 21(1) relegates to ineffectiveness every term of a contract of lease that is not consistent with the provisions of the law. Therefore, any contractual term that confers a right to remain in occupation, notwithstanding the existence of one or more of the grounds set out in s. 16(1), entitling an owner to recover possession, is abrogated and consequently invalid. That this is so, is abundantly clear from the qualification imposed by s. 21 with regard to the amenity of a tenant to vacate the controlled premises; in his case, the relevant provisions of the lease are saved by an express legislative provision. Section 16(1) empowers, in its definitive part, the Court to make an order of recovery of possession in respect of rent controlled premises, that is, controlled houses and shops, without reference to the owner. On any interpretation of the plain introductory provisions of s. 16(1), the jurisdiction to make an eviction order is not defined by reference to the rights of the owner but by reference to the status of the premises, and made dependent on whether the premises are subject to control. Illustrative of this appreciation of the law, are the provisions of s. 16(1)(a)

that confer power on the Court to make an order of ejectment whenever rent lawfully due remains unpaid, without drawing any distinction between rent owing under a contract or by virtue of the operation of the provisions of the law. The power to order ejectment is not dependent on the rights of the owner, but on—

(a) the status of the premises, and

(b) the existence of the factors enumerated in the successive provisions of s. 16.

Both houses and shops, are defined by reference to the date on which the building was completed, quite independently of the rights of the owner over the property. It is instructive to contrast the definition of "residence" and "shop" on the one hand, and "owner" on the other. In the former instance, the defined word is followed by "means" whereas in the latter case by "includes". In the first case the definitions are exhaustive, wherever in the second expansive of the ordinary meaning of the word.

Not only the provisions of s. 16 but those of s. 7 as well, are informative of the wider aims of the law which were briefly to regulate the supply and possession of immovable property in order to remove the worse evils of the scarcity of accommodation created by the Turkish invasion. Like sections 21 and 16, s. 7 reveals, as well, the intention of the legislature to reduce any contract between the parties to relative ineffectiveness; it confers power on the Court to adjust the rent of controlled premises independently of any contract between the parties. In *Ellie G. Meitz & Others* v. *Andreas Pelengaris* (1977) 1 C.L.R. 226, it was decided that the provisions of s. 7 supersede any contractual provisions with regard to rent, and by virtue of the provisions of s. 21(1) any attempt to by-pass the provisions of s. 7 by a contract or otherwise, would be doomed to failure for, any contractual provisions designed to take away the powers vested in the Court to adjust rent, would be null and void. By the same logic, one arrives to the same conclusion with regard to the interpretation and application of the provisions of s. 16, regulating security of tenure. If the interpretation given by the trial Court to "owner" was correct, the owner of rent controlled premises, whose contract has not been terminated or expired, would have no right to apply to the Court for the adjustment

of the rent; and in consequence, the power bestowed on the Court to adjust the rent in the interests of the wider aims of the legislation, would be neutralised. However, we have it from authority, the case of *Meitz*, supra, that contractual stipulations with regard to rent, are superseded by the provisions of s. 7, independently of the right of the owner to recover possession in one way or another. As in the case of s. 16, so with s. 7 the powers of the Court are defined by reference to the status of the premises and the jurisdiction conferred thereby vests in the Court in the case of all rent controlled premises.

In *Yiannopoulos* v. *Theodossiou* (1979) 1 C.L.R. 215, it was decided that the Rent Control Law, 1975, transforms, unlike previous enactments, a contractual tenancy into a statutory one. Although the Court left open the degree and extent of the transformation, whether total or partial, it is implicit from the tenor of the judgment that the transformation is complete with regard to matters specifically dealt with by the law, such as the rent payable, the increase that may be legally sought, and the circumstances under which possession may be recovered. Although the termination of the contract of lease is no longer a prerequisite to the creation of a statutory tenancy, nonetheless the statutory tenancy established by the provisions of the law is no different from a statutory tenancy under the previous law, in the sense that in both cases the right to remain in occupation arises from the statute and not the contract. Those terms of the contract that do not conflict with the provisions of Law 36/75 are saved by s. 21 but their validity no longer depends on the efficacy of the contract but on their incorporation, as part of the terms of a statutory tenancy. It has been argued that it cannot have been the intention of the legislature to confer a right on the owner to claim recovery of possession where none exists under the common law or the law of contract. We endorse the view that the principal aim of the law was to enhance generally security of tenure and not to limit it; but that was not the sole aim of the law; the fundamental purpose was to make the supply of houses and shops, in the aftermath of the Turkish invasion, an important part of social wealth, subject to control. The legislature in its wisdom controlled security of tenure in the terms of s. 16. To that clear aim, we must give vent. There are aspects of s. 16 that could, with benefit, be amended so as to increase security of tenure, and generally

improve the position of tenants. This is not an appropriate case to make detailed recommendations for the amendment of the law, nor do the merits of the case necessitate such a discourse. We may end this part of our judgment by repeating that the provisions of s. 16 confer power on the Court to order recovery of possession of premises subject to control, under Law 36/75. Further, the word "owner" does not bear the limited meaning ascribed to it by the learned trial Judge; the law merely seeks to expand the ordinary meaning of the word that certainly encompasses all owners of property who stand in the position of a landlord vis-a-vis the statutory tenant.

The trial Judge ruled that the appellants made out their case under s. 16(1)(h), a finding that has not been challenged before the Court and one fully warranted, in our view, by the evidence before it. In the exercise of our discretion, we suspend the enforcement of the order for one year. In exercising our discretion under s. 16(2), whether to suspend the enforcement of the order and if so for how long, it is relevant to have regard to the existence of any arrangement between the parties, as to the length of stay; this is indeed a legitimate consideration to have regard to in the exercise of our judicial discretion in this area. The appeal will be allowed. In proceedings under rent control legislation, costs need not necessarily follow the event, for the reasons indicated in *Katsiantonis* v. *Frantzeskou* (1981) 1 C.L.R. 566.

Having regard to the proceedings in their entirety, and the point raised on appeal, we shall refrain from making an order as to costs.

Appeal allowed. Order in terms. No order as to costs.

STYLIANIDES J : An old house situated at Hadjidakis Street, No. 7, in Nicosia, is the ownership of the appellants. The respondent is in occupation of this dwelling house as a tenant thereof. He took up possession on 1.1.1964 by virtue of a contract of lease dated 16.12.1963.

The duration of the lease was stipulated originally for one year but it was automatically renewed from year to year in the absence of a two months' notice of termination envisaged by the said agreement. The said contract was never terminated by either party.

The appellants by Application No. 176/76 applied to the District Court for the determination of the rent, obviously expecting an increase. That application was finally withdrawn on 30.11.1977

On 13.7.1979 the appellants applied for the recovery of possession on the ground that the dwelling house was reasonably required for substantial alteration or reconstruction thereof under s. 16(1)(h) of the Rent Control Law, 1975 (Law No. 36/75). The ingredients of this ground are:–

(a) Service of a three months' notice in writing to the tenant;

(b) The premises are reasonably required by the landlord either for effecting substantial alteration or reconstruction; and,

(c) The landlord has, where necessary, obtained the necessary permit for such alteration or reconstruction.

As the circumstances relevant to this claim, including the obtaining of a permit by the landlord, are those existing at the date when the case is heard, it is sufficient if the landlord has obtained a permit on the date of the hearing. (*Murude Mehmet Ali* v. *Hassan Remzi Shenikli*, 20, Part II, C.L.R. 68).

The notion of "reasonable requirement" in a case of a claim for possession for the purpose of substantial alteration 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 alteration or reconstruction, and it is unrelated to factors, such as of reasonableness and reasonable requirement, envisaged in other paragraphs of s. 16(1). (*Anastassia S. Kontou* v. *Antonis Solomou*, (1978) 1 C.L.R. 425, following the English decision in *Heath* v. *Drown*, [1972] 2 All E.R. 561).

If the trial Judge is convinced that the requirements laid down in s. 16(1)(h) were satisfied, then there is no room for the exercice of any discretion on his part in relation to the making of an order for possession. (*Fisher* v. *Taylors Furnishing Stores, Ltd.*, [1956] 2 All E.R. 78, followed in *Kontou* case (supra)).

The appellants satisfied the requirements of this ground. It was, however, submitted by counsel that the appellants were not entitled to invoke the provisions of s.16(1)(h) of the Rent Control Law, as the duration of the contractual tenancy had not expired.

The trial Judge in a careful and well considered judgment held that the appellants had no right to claim recovery of possession during the contractual period of the tenancy. Against this decision the appellants took this appeal.

It was maintained by Mr. Spyridakis for the appellants that having regard to the all-embracive definition of "statutory tenant" and "tenancy" in Law 36/75, viewed in the light of the decision in *Yiannopoulos* v. *Theodoulou*, (1979) 1 C.L.R. 215, where it was held that Law 36/75 transforms a contractual tenancy into a statutory tenancy even before the expiry of the period of the contractual tenancy, power is conferred on the Courts by s. 16(1) to issue orders of ejectment and recovery of possession of controlled premises at any time after the tenant takes up possession of the premises and that all the stipulations in the contract are abrogated.

Mr. Ladas for the respondent referred to the mischief the Law intended to remedy, the intention of the legislature, and maintained that during the period of the tenancy stipulated in a contract the landlord of controlled premises is not entitled to claim recovery of possession under the Law.

The rent control Law is a social piece of legislation. It is, according to its long title, "A Law to amend, consolidate and incorporate the Rent Control Laws and to provide for relative matters. (Cap. 86, Laws 17/61, 39/61, 19/65, 8/68 and 51/74)".

Rent control legislation was enacted for the first time in this country in 1942 during the Second World War—The Increase of Rent (Restriction) Law, No. 16/42. That Law was applicable, inter alia, to all premises within a radius of five miles from the Municipal Offices of the Municipal Corporations.

Section 8 of that Law restricted the ground of ejectment. One of the grounds is identical to the one invoked by the appellants in this case—Ground 8(1)(d). "Landlord" and "tenant" included any person from time to time deriving title under the original landlord or tenant.

That Law was repealed and substituted by Law No. 13/54 enacted for the purpose of securing the availability of premises at equitable rents and the security of the possession thereof. It was modelled on the English rent control legislation. The definitions of "statutory tenant" and "landlord" are significant. "Statutory tenant" was a tenant who, at the expiration or determination of his tenancy, continued to be in possession of the premises. "Landlord" included, in relation to any premises, any person, other than the tenant, who was or would have been but for the provisions of that Law, entitled to possession of the premises, and in case of sub-tenancy a tenant who sublet the premises or any part thereof. It made provision for determination of the rent and for recovery of possession.

Section 18 provided for the restriction of ejectment to specified grounds.

That Law is Cap. No. 108 of the 1949 edition of the Statutes of Cyprus and Cap. 86 of the 1959 edition.

On the 31st December, 1958, the Governor in Council, in exercice of the powers vested in him by sub-section 2 of section 3 of the said Law, exempted from its operation all business premises and thus deprived them, as from that date, of the protection afforded to them by that Law.

It was amended by Law 8/68. Section 18 was renumbered to s.16 but in other respects it remained unaffected.

On the establishment of the Republic the Rent Restriction (Business Premises) Law No. 17/61 was enacted covering business premises which were built and first let prior to the coming into operation of that Law.

The same definition of "landlord", "tenant" and "statutory tenant" is found in the Rent Restriction (Business Premises) Law No. 17/61. The relevant section for restriction of ejectments on certain grounds is s. 10. Section 10 of Law 17/61 is identical to s. 16 of Cap. 86.

Under the aforesaid Laws the statutory tenancy was created after the determination or the expiration by effluxion of time of the contractual tenancy. Under the general Law of the land a landlord on the happening of the aforesaid event was entitled

to recovery of possession. The legislature by the provisions of the sections to which I have referred restricted his such right to the grounds specified therein. This is also the reason for the definition of "landlord" in the rent restriction legislation after 1954. A landlord in relation to the rent restriction legislation is a person who would have been entitled to possession but for the provisions of the Law.

That was the state of the Law until the cataclysmic events of the summer of 1974. Almost the one-third of the population fled from their homes and business premises and were compressed to the area under the control of the State; thousands of persons were displaced; others were stricken by that emergency; areas became inaccessible and other areas neighbouring the Turkish occupied land became depressed. A temporary measure to alleviate the condition of tenants was passed in the form of Law No. 51/74 that provided for the reduction of 20% of the rent payable by tenants stricken by the emergency. During a period of two months—from 20th July to 20th September —normal life in Nicosia was radically upset; in other towns for a shorter period. Owners of business premises and dwelling houses for letting in the free south, being ordinary human beings, were tempted to exploit the situation by asking extravagant rents, and owners, whose business premises and dwelling houses were not controlled, either evicted or threatened to evict their tenants after the expiration of the contractual tenancy.

The Laws in operation proved insufficient to meet the situation. This was the mischief the legislature had to remedy. The intention of the legislature was to secure the availability of dwelling houses and business premises at equitable rents and the security of the possession thereof and to safeguard the public interest wherever required. The product of that intention and the remedy of that mischief is the Rent Control Law, 1975 (No. 36/75). (See *Objects and Reasons of the Bill* published in Supplement No. 6 to the Official Gazette of the 1.5.1975 and s. 3 of the Law).

It made provision for the determination of rent of dwelling houses and business premises in controlled areas—section 7; for the adjustment of rents of depressed areas—section 10; the restriction of ejectment for non-payment of rent due as from the 20th July for a period of two months—section 11;

the exemption from liability for payment of rents in inaccessible areas—section 13; total exemption from payment of rents of business premises within the area of Nicosia, including some suburbs, for two months from the 20th July, and for business premises within the areas of other towns for a period of one month; for the reduction of rents of premises by 20% in general —section 15—intending to incorporate therein Law 51/74.

These are the provisions by which the legislature implemented its intention with regard to rents. Some of these provisions are transitional and others, notably s. 7, are of more permanent nature.

In order to cover all premises the definitions of "dwelling house", "premises" and "business premises" were formulated so as to include premises completed and let for the first time before 31.12.1974. "Statutory tenant" under the new Law means a tenant of premises completed and let for the first time before 31st December, 1974. This date was extended by later legislation from year to year. This was a radical amendment to the pre-existing Law.

By this amendment the contractual tenancies were transformed into statutory tenancies and the benefit of the Law was made available to all the tenants, including the contractual ones. (*Meitz* v. *Pelengaris*, (1977) 1 C.L.R. 226; *Yiannopoulos* v. *Theodoulou*, (supra)).

Section 16 restricts ejectments to certain specified grounds and is a reproduction of similar provisions in the pre-existing legislation.

The question that poses for determination is whether a landlord, who would not have been entitled to recovery of possession due to the clause of "duration of tenancy" in his contract, is enabled by the Law of 1975 to invoke the restrictive provisions of s. 16(1) and recover possession. Is the Law enabling an owner, who entered into a contract of tenancy of, say, three years' duration, at any time during that period, to resort to Court and invoke any of the grounds specified in s. 16(1) and claim possession? This is the question that the trial Court decided in the negative.

Had it been otherwise, the landlord would be entitled to

invoke any of the grounds specified in s. 16(1) and recover possession though he bargained for a longer period and he conferred possession by agreement to the tenant for a certain stipulated period. The tenant at the same time would be entitled to give up possession at any time after he took possession, without giving any notice to the landlord. If, for example, the duration of a tenancy is stipulated by the parties to be, say, three years, the landlord immediately after the tenant took up possession of the premises would be entitled to apply to the Court under any of the grounds set out in s. 16(1) and claim possession and the tenant from the very first month would be entitled to give up possession without any notice. (*Middle East Entertainment Co. Ltd.* v. *Christos Savvides*, 22 C.L.R. 217).

This is a consolidation Law and the presumption that Parliament does not intend to alter the existing Law applies with particular force, for, unless it is amended, the object of a consolidated Law is merely to "reproduce the Law as it stood before". (*Maxwell on Interpretation of Statutes*, 12th edition, p. 21; *Gilbert* v. *Gilbert*, [1928] P. 1, per Scrutton, L.J.; *R.* v. *Governor of Brixton Prison, ex p. De Demko*, [1959] 1 Q.B. 268, per Lord Evershed, M.R.).

The "golden rule" of construction is a modification of the literal rule. It was stated in this way by Parke B. in *Becke* v. *Smith*, (1836) 2 M. & W 191, at p. 195:–

> "It is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further".

The object or policy of the legislation affords the answer to problems arising from ambiguities which it contains. They have to be construed as particular if the intention be particular.

In interpreting the provisions of the Law we have to bear duly in mind the need to construe such provisions in a manner consistent with the object of Law 36/75 and to avoid producing

any unreasonable result. It is correct that "statutory tenant" and "premises" are all-embracive definitions and that a contractual tenancy for the purpose of rent is transformed into a statutory tenancy due to the aforesaid definitions.

To construe the provisions of s. 16 literally and isolated from other parts of the Law, as increasing the rights of ejectment, is unreasonable and contrary to the intention of the Law. A different construction can be placed on s. 16 if read subject to the provisions of s. 21(1) which is consonant to the object of the Law when read as a whole.

To apply the words literally is to defeat the obvious intention of the legislation and to produce a wholly unreasonable result. To achieve the obvious intention and produce a reasonable result we must do some violence to the words. The general principle is well settled: It is only where the words are absolutely incapable of a construction which will accord with the apparent intention of the provisions and will avoid a wholly unreasonable result, that the words of the enactment must prevail. (*Luke* v. *I.R.C.* (*Inland Revenue Commissioners*), [1963] 1 All E.R. 655, per Lord Reid at page 664).

An intention to produce an unreasonable result is not to be imputed to a statute if there is some other construction available. The result contended by the appellants would be quite irrelevant to the mischief which the statutory provision was intended to meet, viz. the security of possession. (See also *Artemiou* v. *Procopiou*, [1965] 3 All E.R. 539, at p. 544; *Cramas Properties, Ltd.* v. *Connaught Fur Trimmings, Ltd.*, [1965] 2 All E.R. 382, at p. 385; *Western Bank Ltd.* v. *Schindler*, [1976] 2 All E.R. 393, at p. 399).

The point was well put by Ungoed-Thomas, J., in *Re Maryon —Wilson's Will Trusts*, [1967] 3 All E.R. 636, at 642, where he said:-

> "If the Court is to avoid a statutory result that flouts common sense and justice, it must do so not by disregarding the statute or overriding it, but by interpreting it in accordance with the judicially presumed parliamentary concern for common sense and justice".

Section 21(1) which is a reproduction of identical provision of s. 15(1) of the Increase of Rent and Mortgage

Interest (Restrictions) Act, 1920, and of the rent restriction legislation in our country since 1942, reads as follows:-

"21.—(1) A tenant, who, under the provisions of this Law, retains possession of any dwelling house or business premises shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this Law, and shall be entitled to give up possession of the dwelling house or business premises only on giving such notice as would have been required under the original contract of tenancy".

The phrase "terms and conditions" is not very technical.

This section has always been a permanent feature of our rent control legislation. It is an indication as to the legal position of a person who continued in occupation of premises merely by reason of the protection afforded by the Law. (Per Bankes, L.J., in *Remon* v. *City of London Real Property Co. Ltd.*, [1921] 1 K.B. C.A. 49, at p. 55).

This provision is not framed as to extend to the case of the payment of rent; it is not dealing with rent. (*Philips* v. *Copping*, [1935] 1 K.B. 15; *Regional Properties Ltd.* v. *Oxley*, [1945] 2 All E.R. 418; *Frixos Katsikides* v. *Michael Constantinides*, (1969) 1 C.L.R. 31).

In *E. G. Meitz & Others* v. *Andreas Pelengaris* (supra) it was held that a clause in the tenancy agreement providing for progressively increased rent for every succeeding year was inconsistent with section 7(1) of Law No. 36/75 and with the contents of the Law as a whole and with the objects of such Law, as manifested by section 3 as well as other provisions in it.

In England the right of renewal of a tenancy was held to be imported and incorporated in a statutory tenancy under s. 15(1) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. (*William McIlroy Ltd.* v. *Clements*, (1923) W.N. 81 149).

The commencement and duration is an essential term of an agreement for a tenancy. The duration of the tenancy under the contract is a term of the "original contract of tenancy".

It is as a rule a contractual term for the interest of both, the landlord and the tenant.

Applying the above principles and judicial pronouncements and bearing in mind the mischief that the legislation intended to remedy, its intention expressed in s. 3 of the Law and the Objects and Reasons, and reading the Law as a whole, I am unable to agree with the interpretation placed on the Law by my brother Judges. I consider s. 16(1) as a restrictive provision. A landlord may invoke any of the grounds specified therein after the expiration or determination of the contractual period of duration of the tenancy. The term of the duration of the contractual tenancy is not inconsistent with the provisions of the Law. It is a term the tenant has to observe and is entitled to its benefit. On the transformation of the contractual tenancy into a statutory tenancy this term is imported and incorporated into the statutory tenancy.

My brethren decided otherwise. I am in the minority. Nowadays a Bill was introduced in the House of Representatives and published in the Official Gazette, Supplement No. 6, of 23rd December, 1981, page 244. I trust that in view of the difference of judicial opinion the legislature will put their intention in the new Law in an unambiguous language for the benefit of all concerned.

For the aforesaid reasons I would dismiss the appeal but in the circumstances I would make no order as to costs.

Appeal allowed. No order as to costs.