

1985 February 18

[TRIANTAFYLIDES, P., LORIS, STYLIANIDES, JJ.]

ROLIS LIATSOS,

Appellant,

v.

1. CONSTANTINOS GEORGHIOU PONIROU,
2. ELLI C. PONIROU,

Respondents.

(Case Stated No. 196).

Landlord and tenant—Recovery of possession—Application for, filed on the strength of section 16(1)(h) of the Rent Control Law, 1975 (Law 36/75) upon giving three months' notice to the tenant—Repeal of Law 36/75 by the Rent Control Law, 1983 (Law 23/83) whilst the application was pending—Not possible to proceed with the application in view of the provisions of section 32(1) of the latter Law, which has given retrospective operation to section 11(1)(h) thereof, providing for a four 'months' notice—Section 10(2) of the Interpretation Law, Cap. 1 not applicable.

Statutes—Retrospective operation—Principles applicable.

Rent Control Law, 1983 (Law 23/83)—Retrospective operation of—Section 32(1) of the Law.

15 The sole issue in this Case Stated was whether or not since the enactment of the Rent Control Law, 1983 (Law 23/83) it is possible to proceed with an application for the recovery of possession of immovable property which was filed on the strength of section 16(1)(h) of the Rent Control Law, 1975 (Law 36/75), after there had been given to the tenant only three months' notice in writing to evacuate the premises, whereas under section 11(1)(h) of Law 23/83 such notice should have been a notice of not less than four months.

25 *Held*, that even if it was held that the relevant provisions about a three months' notice in section 16(1)(h) of

Law 36/75 and about a four months' notice in section 11(1)(h) of Law 23/83 are not merely procedural but they are provisions of substantive Law, the requirement for a four months' notice in section 11(1)(h) of Law 23/83 is a provision which was given, by means of section 32(1) of such Law, retrospective operation in relation to all pending cases in which a notice of only three months had been given under section 16(1)(h) of Law 36/75; and, that therefore, it is no longer possible especially as Law 36/75 as a whole was repealed by section 35 of Law 23/83, to recover possession of premises in respect of which only a three months' notice was given prior to the coming into force of Law 23/83, and not a four months' notice as required under section 11(1)(h) of Law 23/83.

Held, further, that nor it is possible to save the operation of section 16(1)(h) of Law 36/75, in respect of a three months' notice given and proceedings commenced thereunder prior to the coming into operation of Law 23/83, by relying on the provisions of section 10(2) of the Interpretation Law, Cap. 1, because section 32(1) of Law 23/83, when read in conjunction with section 35 of the same Law, clearly manifests a contrary intention excluding the application of section 10(2) of Cap. 1.

Order accordingly.

Cases referred to:

- Millington-Ward v. Roubina* (1970) 1 C.L.R. 88 at pp. 105, 106;
- Christou v. Pallikaras* (1970) 1 C.L.R. 152 at p. 158, 160;
- "Avgi" Yerolakkos Buses Co. Ltd. v. Psatha* (1971) 1 C.L.R. 1 at pp. 13, 14;
- Marabou Floating Restaurant Ltd. v. The Republic* (1973) 3 C.L.R. 397 at p. 408;
- Zenonos v. Republic* (1973) 3 C.L.R. 437 at p. 442;
- Constantinides v. Republic* (1978) 2 C.L.R. 337 at p. 351;
- Melaisi v. M. & M. Georghiki Eteria Ltd.* (1979) 1 C.L.R. 748 at pp. 763-768;

Constantinou v. C.Y.T.A. (1980) 3 C.L.R. 243 at pp. 255, 256;

National Real Estate Finance Co. Ltd. v. Hassan [1939] 2 All E.R. 154 at p. 159;

5 *Re 14 Grafton Street, London W1, De Havilland (Antiques) Ltd. v. Centrovincial Estates (Mayfair) Ltd.*, [1971] 2 All E.R. 1 at pp. 9, 10;

International Military Services Ltd. v. Capital and Counties plc [1982] 2 All E.R. 20 at pp. 29, 30;

10 *Cardshops Ltd. v. John Lewis Properties Ltd.* [1982] 3 All E.R. 746.

Case stated.

15 Case stated by the Chairman of the Rent Control Court of Limassol relative to its decision of the 28th January, 1984 in proceedings under section 16(1)(h) of the Rent Control Law, 1975 (Law No. 36/75) instituted by Constantinos G. Ponirou and another against Rolis Liatsos whereby their objection that the landlords cannot recover possession of their premises because only a three months' notice was given, 20 was dismissed.

G. A. Michaelides, for the appellant.

E. Theodoulou, for the respondents.

Cur. adv. vult.

25 TRIANTAFYLLIDES P. read the following judgment of the Court. By means of this Case Stated there was referred to this Court the question of law of whether or not since the enactment of the Rent Control Law, 1983 (Law 23/83) it is possible to proceed with an application for the recovery of possession of immovable property which was filed on the 30 strength of section 16(1)(h) of the Rent Control Law, 1975 (Law 36/75), after there had been given to the tenant only three months' notice in writing to evacuate the premises, whereas under section 11(1)(h) of Law 23/83 such notice should have been a notice of not less than four months.

35 The aforesaid application for recovery of possession

was filed on the 27th February 1982 while Law 36/75 was still in force and, by virtue of the provisions of section 32(1) of Law 23/83, it became, eventually, a case before the Rent Control Court of Limassol which was set up under Law 23/83.

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It was objected by the appellant, who is the tenant, that the respondents, who are the landlords, cannot recover possession of the premises concerned because only a three months' notice had been given, prior to the commencement of the proceedings, to the tenant, under section 16(1)(h) of Law 36/75 whereas such notice should now be a notice of four months, under section 11(1)(h) of Law 23/83.

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This objection was rejected by the Rent Control Court and, as a result of an application by the tenant, the legal question involved in such objection has come before us by way of the present Case Stated.

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Section 32(1) of Law 23/83 provides that all judicial proceedings which are pending on the date of the coming into force of such Law are transferred to the Rent Control Court set up under the said Law, which deals with them and issues an order or judgment in accordance with the provisions of that Law.

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There arises, therefore, the issue of whether or not the right of a landlord to recover possession of premises under section 16(1)(h) of Law 36/75 can be defeated because he has not given a four months' notice as required by section 11(1)(h) of Law 23/83, even though he has given a three months' notice under section 16(1)(h) of Law 36/75 and has commenced proceedings for recovery of possession prior to the coming into force of Law 23/83 on the 22nd April 1983.

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In other words, it has to be determined whether or not a landlord by giving a notice of three months under section 16(1)(h) of Law 36/75 and by commencing proceedings for recovery of possession under that Law prior to the coming into force of Law 23/83 has become vested with a right of which he cannot be deprived by means of section 32(1) of Law 23/83.

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Having considered carefully all the arguments which were advanced before us by counsel for the parties we have reached the conclusion that, even if it was held that the relevant provisions about a three months' notice in section 16(1)(h) of Law 36/75 and about a four months' notice in section 11(1)(h) of Law 23/83 are not merely procedural but they are provisions of substantive law, the requirement for a four months' notice in section 11(1)(h) of Law 23/83 is a provision which was given, by means of section 32(1) of such Law, retrospective operation in relation to all pending cases in which a notice of only three months had been given under section 16(1)(h) of Law 36/75; and, therefore, it is no longer possible, especially as Law 36/75 as a whole was repealed by section 35 of Law 23/83, to recover possession of premises in respect of which only a three months' notice was given prior to the coming into force of Law 23/83, and not a four months' notice as required under section 11(1)(h) of Law 23/83.

Regarding the retrospective operation of statutes the relevant principles are stated as follows in Maxwell on the Interpretation of Statutes, 12th ed., pp. 215, 216, 220, 221, 225:

“Upon the presumption that the legislature does not intend what is unjust rests the leaning against giving certain statutes a retrospective operation. They are construed as operating only in cases or on facts which come into existence after the statutes were passed unless a retrospective effect is clearly intended. It is a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication.*

The statement of the law contained in the preceding paragraph has been 'so frequently quoted with

* *West v. Gwynne* [1911] 2 Ch. 1, per Kennedy L.J. Cf. *Smith v. Callander* [1901] A.C. 297; *Re Snowdon Colliery Co. Ltd.* [1925] 94 L.J. Ch. 305.

approval that it now itself enjoys almost judicial authority.*

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In general, when the substantive law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights.

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The rule against retrospective operation is a presumption only, and as such it 'may be overcome, not only by express words in the Act but also by circumstances sufficiently strong to displace it.' ***

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It is, also, useful to refer to the following passages from Halsbury's Laws of England, 4th ed., vol. 44, pp. 570, 571, para. 922, p. 573, para. 924 and p. 574, para. 925:

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"922. *Presumption against retrospection.* The general rule is that all statutes, other than those which are merely declaratory, or which relate only to matters of procedure or of evidence, are prima facie prospective, and retrospective effect is not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the legislature. Similarly, the courts will construe a provision as conferring power to act retrospectively only when clear words are used.

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It is also in reliance on the presumption that the courts have frequently held pending proceedings to be unaffected by changes in the law so far as they

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* Carson v. Carson [1964] 1 W.L.R. 511, per Scarman J. at p. 516. C.f. Croxford v. Universal Insurance Co. Ltd. [1936] 2 K.B. 253, per Scott L.J. at p. 281. «That page (of Maxwell) seems to me to contain an almost perfect statement of the principle that you do not give a statute retrospective operation unless there is perfectly clear language showing the intention of Parliament that it shall have a retrospective application».

** Sunshine Porcelain Potteries Pty., Ltd. v. Nash [1961] A.C. 927, per Lord Reid at p. 938.

relate to the determination of substantive rights. In the absence of a clear indication of a contrary intention in an amending enactment, the substantive rights of the parties to an action fall to be determined by the law as it existed when the action was commenced; and this is so whether the law is changed before the hearing of the case at first instance or while an appeal is pending.

10 924. *Avoidance of greater degree of retrospection than necessary.* It is a corollary of the general presumption against retrospection that, even where a statute is clearly intended to be to some extent retrospective, it is not to be construed as having a greater retrospective effect than its language renders necessary.

15 925. *Statutes relating to procedure or evidence.* The presumption against retrospection does not apply to legislation concerned merely with matters of procedure or of evidence; on the contrary, provisions of that nature are to be construed as retrospective unless there is a clear indication that such was not the intention of Parliament.”

25 In relation to the matter of retrospectivity of statutes it is useful to refer to, inter alia, the following case-law in Cyprus in which relevant principles which obtain in England were applied: *Millington-Ward v. Roubina*, (1970) 1 C.L.R. 88, 105, 106, *Christou v. Pallikaras*, (1970) 1 C.L.R. 152, 158, 160, “*Avgi*” *Yerolakkos Buses Co. Ltd. v. Psatha*, (1971) 1 C.L.R. 1, 13, 14, *Marabou Floating Restaurant Ltd. v. The Republic*, (1973) 3 C.L.R. 397, 408, *Zenonos v. The Republic*, (1973) 3 C.L.R. 437, 442, *Constantinides v. The Republic* (1978) 2 C.L.R. 337, 351, 352, *Melaisi v. M. & M. Georghiki Eteria Ltd.*, (1979) 1 C.L.R. 748, 763-768, *Constantinou v. The Cyprus Telecommunications Authority*, (1980) 3 C.L.R. 243, 255, 256 and *Varnavides v. Ioannou*, (1982) 1 C.L.R. 263, 270-275.

Also, it is pertinent to refer to, inter alia, the following

English cases in relation to the same matter: *National Real Estate and Finance Co. Ltd. v. Hassan*, [1939] 2 All E.R. 154, 159, *Re 14 Grafton Street, London W1, De Havilland Antiques) Ltd. v. Centrovincial Estates (Mayfair) Ltd.*, [1971] 2 All E.R. 1, 9, 10, *International Military Services Ltd. v. Capital and Counties plc.*, [1982] 2 All E.R. 20, 29, 30 and *Cardshops Ltd. v. John Lewis Properties Ltd.*, [1982] 3 All E.R. 746.

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Nor, in our opinion, it is possible to save the operation of section 16(1) (h) of Law 36/75, in respect of a three months' notice given and proceedings commenced there-under prior to the coming into operation of Law 23/83, by relying on the provisions of section 10(2) of the Interpretation Law, Cap. 1, because section 32(1) of Law 23/83, when read in conjunction with section 35 of the same Law, clearly manifests a contrary intention excluding the application of section 10(2) of Cap. 1, as was found to be the position in, inter alia, the *Christou* case, supra.

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For all the foregoing reasons the answer to the question of law which was referred to us by means of the present Case Stated is that even if a three months' notice was given and proceedings were commenced under section 16 (1) (h) of Law 36/75, once Law 23/83 has come into operation while such proceedings were pending it is no longer possible to recover possession of the premises concerned under section 16(1) (h) of Law 36/75; and, also, that this cannot be achieved under the corresponding provision of Law 23/83, which is section 11(1) (h) of such Law, because there is required under the said section of four months' notice.

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The case is now remitted to the Rent Control Court of Limassol to be determined in accordance with the judgment given in this Case Stated.

In view of the nature of the question of law which has arisen, and all other relevant considerations, we do not propose to make any order as to costs of this Case Stated.

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*Appeal allowed. Case
remitted to trial Court.*