1985 August 1

[A. LOIZOU, MALACHTOS AND STYLIANIDES, JJ.]

VENERIS ESTATES & TOURS LTD.,

Appellants-Defendants,

v.

EMILIA MARKIDOU,

Respondent-Plaintiff.

(Civil Appeal No. 6656).

Interpretation of statutes—Whether the words "Tourist Establishments" in the definition of tenancy in the Rent Control Law 23/1983 should be given the same meaning as it is ascribed to them in the Hotels and Tourist Establishments Law 40/1969 as amended—Said statutes not in pari materia—Said words should be given their ordinary meaning.

Rent Control Law 23/1983—Section 2—"Tourist Establishments" excluded from operation of said law.

Words and Phrases: "Tourist Establishments" in the definition of "tenancy" in section 2 of Law 23/1983.

The appellants were the lessees of a flat owned by the respondent, which was let to them by virtue of a contract of lease dated the 28th August 1981, for a period of two years commencing the 1st September 1981. There was given to them by virtue of Term 9 thereof, the right to sublet the premises during the period of the tenancy and on the strength of the said term the premises were sublet to a third person who was the tenant.

The trial Judge found that the applicant (appellant) company being a company dealing with premises let out to tourists had this very purpose in mind from the very beginning, that is to find tourist tenants and let out to them the premises in question.

The main issue in this appeal is whether the term "tourist establishments" to be found in the definition of the word "Tenancy" in section 2 of the Rent Control Law 23/1983 by which definition "tourist establishments" are excluded from the operation of that law, should be given the same meaning as it is ascribed to them in the Hotels and Tourist Establishments Law 40/1969 as amended by Laws 52/1970, 17/1973 and 34/1974.

Counsel for the appellants argued that for the premises to come within the definition of "tourist establishments" the provisions of the latter Law regulating the operation of "Hotels and Tourists Establishments" as defined therein should be satisfied.

It should be noted that in the present case such requirements were not satisfied.

Held, dismissing the appeal (1) The question of construing together two statutes as one system and as explanatory of each other so that when there is an ambiguity in one it may be explained by reference to another statute in the same system arises in cases of statutes in pari materia. In the present case the two enactments in question are not in pari materia. In fact the definition section in Law No. 40 of 1969 commences with the words, "In this law unless the context otherwise requires." Therefore the terms defined in such interpretation section do not necessarily apply in all the possible contexts in which such words may be found in the Law itself, more so in the context in which they are used in other enactments not in pari materia with the one containing the interpretation clause.

(2) In the light of the above the words "tourists establishments" in the definition of "tenancy" in section 2 of Law 23/1983 should be given their ordinary meaning or common or popular sense and as they would have been generally understood the day the enactment was passed; such a construction does not lead to manifest absurdity nor does the context requires any special or particular meaning to be given to such words.

On the contrary it would lead to an absurd situation

if tourist establishments operating not in compliance with the Hotels and Tourist Establishments Law were to be offerred the protection of the Rent Control Law whereas those operating in compliance with the requirements of the said Law were to be burdened with its provisions.

Halsbury's Laws of England, 3rd Edition, Vol. 36 para 574, 587 and 607 referred to with approval.

Appeal dismissed with costs.

Cases referred to:

Pantelides v. *Metaforiki Eteria* (1979) 1 C.L.R. 794;

Stock v. *Frank Jones (Tipton) Ltd.* [1978] 1 All E.R. 948.

Appeal.

Appeal by defendants against the judgment of the District Court of Limassol (Artemis, S. D. J.) dated the 5th December, 1983 (Action No. 3875/83) whereby their application for an order setting aside the writ of summons for want of jurisdiction was dismissed.

G. Michaelides, for the appellants.

C. Melas, for the respondent.

Cur. adv. vult.

A. Loizou J. read the following judgment of the Court. This is an appeal from the judgment of a Judge of the District Court of Limassol by which the application of the appellants for an order to set aside the writ of summons in the action for want of jurisdiction was dismissed with no order as to costs.

The relevant facts of the case as emanating from the record and as found by the learned trial Judge on the basis of the affidavit evidence adduced are briefly these.

The appellants were the lessees of a flat owned by the respondent, which was let to them by virtue of a contract of lease dated the 28th August 1981, for a period of two years commencing the 1st September 1981. There was given

to them by virtue of Term 9 thereof, the right to sublet the premises during the period of the tenancy and on the strength of the said term the premises were sublet to a third person who was the tenant.

In considering the factual aspect of the case the learned trial Judge found that it was an uncontradicted allegation contained in the affidavit of the respondent that the applicant Company being a Company dealing with premises let out to tourists had this very purpose in mind from the very beginning, that is to find tourist tenants and let out to them the premises in question. This he said is plain from the fact that it was also never used by the Company but it was sublet to a foreigner.

The learned trial Judge after referring to the relevant statutory provisions and the general principles of interpretation concluded as follows:

> "It would have been absurd at a time when the Legislator wanted not to extend the application of the Law to 'τουριστικά καταλύματα', (tourist establishments) for the Court to come and say that, because the requirements of the laws regulating such premises and requiring a permit for them are not satisfied, the present instance is not one of letting premises as tourist lodgings and this at a time when the Law expressly wants to exclude premises so used from the application of the Law.
>
> Giving the term its literal and natural meaning and having in mind the purpose of the Legislator in enacting this Law, I feel that in the circumstances the present premises do not come within the ambit of Law 23/83 and that this Court has jurisdiction in the matter."

The grounds of appeal and the reasons therefor are the following:

> "1. The Court erred in holding that the plaintiff's flat is a tourist establishment (τουριστικό κατάλυμα) and as such did not come within the ambit of the Rent Control Law, No. 23/83.

2. The Court erred in holding that in interpreting the term 'τουριστικά καταλύματα' in Law No. 23/83 the provisions of the Hotels and Tourist Establishments Law No. 40/69 as amended by Laws No. 17/73 and 34/74 describing 'τουριστικά καταλύματα' should be taken into consideration.

3. The Court erred in holding that the single fact that the flat was sublet to a foreigner made it a tourist establishment irrespective of any other consideration.

4. The Court erred in giving a literal meaning to the words 'τουριστικά καταλύματα' whereas the said words have a technical meaning and should be construed in their technical sense and/or given their strict legal interpretation.

5. The Court erred in holding that the defendant is not a statutory tenant and that the District Court of Limassol has jurisdiction to deal with the present action".

In the Rent Control Law 1983, (Law 23 of 1983) "tenancy" is defined as follows:

«'Ενοικίασις' σημαίνει ενοικίασιν, είτε έγγραφον ή άλλως, ή κατοχήν ακινήτου, δυνάμει της οποίας δημιουργείται η σχέσις ιδιοκτήτου και ενοικιαστού αλλά δεν περιλαμβάνει ενοικίασιν γης χρησιμοποιημένην δια γεωργικούς σκοπούς ή ενοικίασιν σταθμών δια την πώλησιν πετρελαιοειδών ή ενοικίασιν χώρου σταθμεύσεως μηχανοκινήτων οχημάτων, ή ενοικίασιν επιπλωμένων κατοικιών ή διαμερισμάτων βραχυτέρων των εξ μηνών ή ενοικίασιν ξενοδοχείων, ξενοδοχειακών καταστημάτων, ξενοδοχειακών μονάδων ή τουριστικών καταλυμάτων».

(In English)

"'Tenancy' means any lease whether in writing or otherwise or possession of immovable by virtue whereof the relationship of landlord and tenant is created but does not include the letting of land used for agricultural purposes or letting of stations for the sale of

petroleum products or letting of parking places for motor vehicles or letting furnished premises or flats for less than six months, or letting of hotels, hotel premises, hotel units or tourist establishments."

In the Hotels and Tourist Establishments Law, 1969, as amended by Laws No. 52 of 1970, 17 of 1973, 34 of 1974, the term «τουριστικά καταλύματα» is defined as follows:

«'Τουριστικό κατάλυμα' σημαίνει κατάστημα ή ωργανωμένον χώρον, άλλο ή ξενοδοχείον, εν τω οποίω παρέχεται κατ' επάγγελμα στέγη διαμονής ή ευκολίαι προς κατασκήνωσιν υπό όρους επαρκών ανέσεων.»

(In English)

" 'Tourist establishment' means premises or organized spaces other than hotel providing by way of trade or business sleeping accommodation or facilities for camping with adequate amenities."

Section 17 in Part III of the Law under the heading Tourist Establishments, as amended by Law 17 of 1973, reads as follows:

"17. The Tourist Establishments shall be -

(a) holiday camps;

(b) camping grounds and car campings;

(c) hotel apartments and service flats;

(d) tourist villas."

It may be pointed out that section 17 has been further amended by section 12 of Law 28/85 by the addition after paragraph (d) of the following:

"(e) tourist villages;

(f) tourist flats;

(g) traditional establishments, or the traditional houses."

We are not, however, concerned with this recent amendment.

Before we proceed any further we may say from the outset that in so far as the findings made by the learned trial Judge are contested, we are not prepared to interfere with as they are duly warranted by the evidence adduced.

The main issue therefore for determination in this appeal is whether the term "tourist establishments" to be found in the definition of the word "tenancy" of the "Rent Control Law" by which definition "tourist establishments" are excluded from the operation of that Law, should be given the same meaning as it is ascribed to it in the Hotels and Tourist Establishments Law, 1969.

It was argued that for premises to come within the definition of "tourist establishments" the provisions of the latter Law which regulates the operation of "Hotels and Tourists' Establishments" as defined therein should be satisfied.

It was, on the other hand argued that this Law was made for a different purpose and it should have no bearing in interpreting the expression used in the Rent Control Law where no definition of them is given and that the words should be given their ordinary meaning or common or popular sense as they would have been generally understood at the time of the enactment of the Law in question, having in mind of course its purpose.

As pointed out in Halsbury's Laws of England, 3rd edition volume 36, paragraph 574:

> "An interpretation section does not necessarily apply in all the possible contexts in which a word may be found in the statute. If a defined expression is used in a context which the definition will not fit, it may be interpreted according to its ordinary meaning. In practice, interpretation sections in modern statutes almost invariably contain express provision that

the meanings thereby assigned are to apply unless the context otherwise requires.

The fact that a particular meaning may be assigned to a term for the purposes of a particular statute by an interpretation section contained therein does not necessarily alter the generally accepted meaning of the term when used for other purposes.

In the construction of an interpretation section it must be presumed that Parliament has been specially precise and careful in its choice of language, so that the rule that words are to be interpreted according to their ordinary and natural meaning carries special weight."

Furthermore in Halsbury's (supra) paragraph 587 it is stated:

"Words are primarily to be construed in their ordinary meaning or common or popular sense, and as they would have been generally understood the day after the statute was passed, unless such a construction would lead to manifest and gross absurdity, or unless the context requires some special or particular meaning to be given to the words. Where the words used are familiar and are in common and general use in the English language, then it is inappropriate to try to define them further by judicial interpretation and to lay down their meaning as a rule of construction, and the only question for a Court is whether the words are apt to cover or describe the circumstances in question in a particular case, and evidence that they are used in some special and peculiar sense is not admissible."

The question of construing together two Statutes as one system and as explanatory of each other so that when there is an ambiquity in one it may be explained by reference to another Statute in the same system arises, as pointed out in Halsbury's (supra) para 607 in cases of Statutes in pari materia where it is stated:

"Where the natural meaning of a statute is clear,

it is dangerous to refer to other statutes in pari materia which do not set out a clear scheme of Law. It is difficult to define with precision what constitutes being in pari materia, but the Short Titles Act, 1896, and many other modern statutes have grouped under collective titles many series of statutes, and this may perhaps be regarded as showing that Parliament considers the statutes in any one such series as being in pari materia. Statutes of colonial legislatures may be regarded as in pari materia with statutes of the United Kingdom Parliament dealing with the same subject matter, so that decisions on the latter may be considered in construing the former."

In the present case we cannot say that the two enactments in question are in pari materia. In fact the definition section in Law No. 40 of 1969 commences with the words, "In this law unless the context otherwise requires." Therefore the terms defined in such interpretation section do not necessarily apply in all the possible contexts in which such words may be found in the Law itself, more so in the context in which they are used in other enactments not in pari materia with the one containing the interpretation clause.

In *Pantelides* v. *Metaforiki Eteria* (1979) 1 C.L.R. 794, this Court held in relation to a statutory enactment which presented a lacuna that it was not entitled to read words in it and that in the absence of a definition the term "private motor-vehicles" in issue in that case, had to be interpreted in its ordinary and natural meaning and it adopted and followed the principle enunciated in *Stock* v. *Frank Jones (Tipton) Ltd.*, [1978] 1 All E.R. 948.

In the light of the above we have no difficulty in concluding that the words "tourist establishments" to be found in the definition of "tenancy" in section 2 of the Rent Control Law, have to be given their ordinary meaning or common or popular sense and as they would have been generally understood the day the enactment was passed, as such a construction does not lead to manifest and gross absurbity nor does the context require any special or particular meaning to be given to these words.

On the contrary it would lead to an absurd situation if tourist establishments operating not in compliance with the Hotels and Tourist Establishments Law, were to be offered the protection of the Rent Control Law whereas those operating in compliance with the requirements of the said Law were to be burdened with its provisions.

For all the above reasons the appeal fails and is hereby dismissed with costs.

Appeal dismissed with costs.