1987 June 29

[MALACHTOS, PIKIS, KOURRIS, JJ.]

LAMARCO LTD.,

Appellant-Respondent,

v.

HERACLIS G. KRANOS,

Respondent-Applicant.

(Civil Appeal No. 7232).

Rent Control — Recovery of possession — The Rent Control Law 23/83 — Section 11(1)(h)(iii) — «Substantial» and «Radical» alterations entailing consequentially «radical» and «total» alteration and transformation of the building — Implication of term «development» (αξιοποίησις) left open — Building consisting of a large shop with a house on top of it — Plans for sub-division of shop into four shops with mezzanines and construction of railed staircases facilitating access to mezzanines — Reinforcement of building by erection of new columns — Such changes do not qualify as «radical» — Furthermore, they do not entail «total» alteration and transformation of the building.

On the application of the owner (respondent) the Rent Control Court of Limassol made an order for the recovery of possession of the shop, which the appellant occupied as a statutory tenant. The order was made under section 11(1)(h)(iii)* of Law 23/83.

The premises of the respondent consist of a large shop with four windows used by the tenants for the display and sale of their furniture. On the first floor there is a house. The plans of the respondent envisaged sub-division of the shop into four smaller ones, coupled with the creation of a mezzanine in each shop enhancing the shop space by about 40% and the construction of railed staircases to facilitate access to the mezzanines. To make the changes possible, the building must be reinforced by the erection of new columns. The respondent anticipated that upon completion of the alterations the premises will yield an income of £700 instead of the present income of £330.-

The trial Court found that the aforesaid plans entail substantial and radical changes and, consequently, issued the aforementioned order. Hence the present appeal by the tenant.

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* *Quoted at pp. 342-343 post.*

Held, allowing the appeal (A) Per Pikis, J., Malachtos, J. concurring: (1) There are important differences between the 1983 legislation and the corresponding provisions of the Law it replaced (36/75) designed to stiffen the prerequisites for recovery of possession for purposes of changes and alterations.

(2) The first hurdle that the owner must overcome is that he must establish that the changes are consequential to the character of the building and sufficiently fundamental to qualify as radical. The antonym of «substantial» in the context of section 11(1)(h)(iii) is «superficial». In this case the proposed changes are «substantial» but not «radical», because they do not go to the root of the structure and will leave the character of the building much the same, that is a two-storey building with shops on the ground floor and a house on top. More consequentially the changes do not entail the radical and total alteration and transformation of the building.

(3) In the light of the above it is not necessary in this case to examine the implication of the term «development» (αξιοποίησις) in the context of section 11(1)(h)(iii).

(B) Per Kourris, J.: (1) To justify an order under s. 11(1)(h)(iii) the owner is burdened to prove not only that the premises are reasonably required for substantial and radical alterations, but also that the changes entail the radical and the total alteration of the building and aim at the development of the property.

(2) It is impossible to give an accurate and comprehensive definition of the alterations required to justify an order under s. 11(1)(h)(iii). The question is one of degree depending on the facts of a particular case.

(3) In this case the proposed alterations did not justify the making of the order.

Appeal allowed with costs.

Cases referred to:

A.C.T. Textiles v. Zodhiatis (1986) 1 C.L.R. 89;

Shammon v. McMahon (1945) I.R. 327;

Papageorghiou v. HjiPieras (1981) 1 C.L.R. 560.

Appeal.

Appeal by respondent against the judgment of the Rent Control Court of Limassol dated the 30th April, 1986 (Appl. No. E. 217/85) whereby an order for the recovery of possession of a shop was made against the respondent.

R. Stavrakis with M. Christodoulou, for the appellant.

R. Michaelides, for the respondent.

Cur. adv. vult.

MALACHTOS J.: The first judgment of the Court will be delivered by Pikis, J., with which I am in full agreement.

PIKIS J.: The respondent in this appeal is the owner of a large ground floor shop in what has been described as the tourist area of Limassol and the appellant its occupant, holding as statutory tenant. On the application of the owner the Rent Control Court of Limassol made an order for the recovery of possession of the shop pursuant to the provisions of s. 11(1)(h)(iii) of the Rent Control Law, 1983 (23/83). Two other grounds upon which the application for recovery of possession was also pegged were dismissed; the first because it was abandoned and the second for lack of satisfactory proof. The abandoned ground was tied to a relief for recovery of possession for purposes of demolition and reconstruction (s. 11(1)(h)(ii)), whereas by the ground that was dismissed, recovery was sought for destructive acts or acts of wanton negligence causing deterioration of the premises (s. 11(1)(c)).

The trial Court found that the evidence before it established that the premises were reasonably required for substantial and radical changes (τροποποιήσεις) and on that account ordered recovery of possession.

The appellant mounted in essence a two-pronged challenge to the judgment of the trial Court. The first affected the findings of the Court allegedly inadequate to support an order under s. 11(1)(h)(iii). The second was a wider one relating to the facts pertinent to the contemplated changes. These facts, it was submitted, could not under any circumstances justify the making of an order under the aforementioned provision of the law and for that reason we were invited to allow the appeal and not merely order a retrial that might be the outcome if the appeal was allowed on that score alone.

The leased premises consist of a large shop with four windows used by the tenants for the display and sale of their furniture. On the first floor there is a house. The plans of the owner envisaged the sub-division of the shop into four smaller ones, coupled with certain structural alterations designed to increase the usable space of the shops to be built by the creation of a mezzanine in each shop

enhancing the shop space by about 40%. Railed staircases will be constructed to facilitate access to the mezzanines. To make the changes possible, the building must be reinforced by the erection of new columns. The owner anticipates that when the shop is duly sub-divided as planned, the premises will yield an income of £700.-, that is, more than twice the present income of £330.- per month.

Mr. Stavrakis for the appellant challenged not only the findings of the Court but more so gaps in pertinent findings. Viewed from whatever angle the facts in their entirety could not, he submitted, support an order under s. 11(1)(h)(iii). Introducing the law he reminded us that we cannot treat any part of the provisions of s. 11(1)(h)(iii) as surplusage and drew our attention to the decision of the Supreme Court in *A.C.T. Textiles v. Zodhiatis** in which the differences between the Rent Control Law of 1983 and those of its predecessor Law 36/75 in the area under consideration were highlighted with a view to emphasizing the more exacting requirements of the new legislation. These changes in the law, purposive as they must be deemed to be, were noticed by the trial Court but not articulated in their application to the facts of the case.

To warrant an order under s. 11(1)(h)(iii), it is not enough for the owner to merely prove that the premises are reasonably required for substantive and radical changes, the finding upon which the trial Court based its order; the law stipulates three other prerequisites equally essential for the making of an order. The first and second of these requirements relate to the effect of the substantive and radical changes on the building as a whole and the third to the purpose for which the changes are sought to be undertaken. The changes in addition to being of a substantial and radical character they must entail (a) the radical, and (b) the total alteration of the building, and must aim at (c) the development of the property.

The provisions of s.11(1)(h)(iii) do not correspond to any specific provision of English legislation; nonetheless some assistance can be derived from English caselaw dealing with statutory provisions giving a right to recovery of possession for purposes of substantial alterations or reconstruction. If we can sum up the effect of the caselaw as accurately depicted in the work of

* *(1986) 1 C.L.R. 89.*

Meggary on the Rent Control Acts* for the changes to qualify as sufficiently substantial to justify an order, they must be fundamental in character and entail the transformation of the general structural character of the building**. The alterations must be such as to bring about a change in the identity of the premises, a term used time and again to signify the drastic nature of the changes contemplated by the law as a necessary prerequisite for the making of an order.

In the end counsel for the appellants submitted that the proposed changes in this case do not qualify as either substantial or radical and in any event they do not entail, however beneficially we interpret the law for the owner, either the radical and far less the total alteration of the building. Furthermore, he submitted that the changes do not aim at the development of the property as the property is already developed in the context of the character of the area. Development, he argued, in the relevant context of this law, does not connote changes designed to enhance or maximize the income from the property; else the law would be defeated by a side wind

For his part Mr. Michaelides laid stress on the uneven financial circumstances of the parties pointing out that the tenants have a large cycle of business and that the sale of furniture is but a branch of their business. The owner, on the other hand, is an advocate who derives his income from his profession and land holdings. The turnover from the financial activites of the tenants leaves no doubt about their superiority as compared to the owner. The plight of the tenants, therefore, is not such as would merit the immediate protection of the Court. The answer to this submission, a fairly obvious one, is that the Rent Control Law aims to protect tenants as a class and not the impoverished or the weaker members of that class. The Rent Control legislation constitutes an important aspect of the social legislation of the country, especially after the tragic events of 1974 and as such should be given effect according to the tenor of the law and should be applied in the spirit of the avowed purposes of the legislature***.

Moreover, Mr. Michaelides submitted that the contemplated changes are, as the trial Court found, substantial and radical and as such satisfy the remaining requisites of s. 11(1)(h)(iii). Also they aim at the redevelopment of the property in conformity with the

* *10th Ed., Vol. 1, pages 112-118.*

** *Shannon v. McMahon (1945) I.R. 327, at 332.*

*** *See, inter alia, Papageorghiou v. HjiPieras (1981)1 C.L.R. p 560*

prevalent character of the area that mostly comprises small shops for the service of tourists.

We have carefully considered the rival submissions not least because this is the first case in which the Supreme Court is required to address itself specifically to the implications of s. 11(1)(h)(iii). Firstly we note that there are important differences between the 1983 legislation and the corresponding provisions of the law it replaced (36/75); no doubt designed to stiffen the prerequisites for recovery of possession for purposes of changes and alterations to the building.

To qualify as substantial and radical, the first hurdle that the owner must overcome, it must be established that the changes are consequential to the character of the building and sufficiently fundamental to qualify as radical. The antonym of «substantial» in the context of this provision of the law is «superficial». The proposed changes in this case do rank as substantial but they do not qualify as radical. They do not go to the root of the structure and will leave the character of the building in much the same condition as it was before, a two-storey building with shops on the ground floor and a house on top. In essence what is contemplated is the sub-division of a large shop into four smaller ones, leaving the structure and character of the building basically unaffected.

More consequentially the changes do not entail the radical and total alteration and transformation of the building. As noted above the changes will leave the structure and character of the building essentially unaffected.

Our conclusions, noted above, make the success of the appeal inevitable. This being the case it is unnecessary to probe the implications of «development» in the context of s. 11(1)(h)(iii) and express a concluded opinion in the matter; or indeed decide whether the planned changes in this case would qualify as an act of development. We leave the question open for decision on a future opportune occasion.

In the result the appeal is allowed with costs.

KOURRIS J.: This is an appeal from the judgment of the Rent Tribunal of Limassol granting an order for the recovery of possession of business premises situate at Limassol, under the provisions of s. 11(1)(h)(iii) of the Rent Control Law, 1983 (Law 23/83).

On 4/10/1985, the respondent filed an application in the Rent Tribunal of Limassol, claiming possession of a shop pursuant to the provisions of s. 11(1)(h)(iii). The respondent, also, claimed possession under the provisions of s. 11(1)(h)(ii) and Section 11(1)(c). But, these two grounds were dismissed; the first because it was abandoned and the second because of insufficient evidence.

The facts shortly are these: The respondent is the owner of a large ground floor shop situate along No. 43 Promachon Eleftherias Street which is in the tourist area of Limassol and the appellant is the statutory tenant using the shop for the display and sale of furniture. On top of the shop is the house of the owner.

The architectural plans of the owner provided for the sub division of the shop into four smaller ones with mezzanine in each shop in order to enhance the space. To achieve this, certain structural alterations were necessary such as the construction of mezzanines and the erection of columns and railed staircases. In the event, the rent would be increased by more than twice, i.e. from £330.- per month to £700.- per month.

The Rent Tribunal found that on the evidence before it the premises were reasonably required for substantial and radical alterations, and consequently granted an order for recovery of possession.

The appellants' main grounds are that the findings of the Court are inadequate to support an order under s. 11(1)(h)(iii) and that, in any event, the facts, as found by the Rent Tribunal with regard to the alterations of the premises, could not justify the making of an order for possession under the said section.

It is pertinent, at this stage, to set out the provisions of s. 11(1)(h)(iii) of the Rent Control Law, 1983 (Law 23/83) which reads as follows:-

«11(1) Ουδεμία απόφασις και ουδέν διάταγμα εκδίδεται διά την ανάκτησιν της κατοχής οιασδήποτε κατοικίας ή καταστήματος, δια το οποίον ισχύει ο παρών Νόμος, ή δια την εκ τούτου έξωσιν θεσμίου ενοικιαστού, πλήν των ακολούθων περιπτώσεων:-

(η) Εις την περιπτωσιν και εάν το ακίνητον απαιτείται λογικώς υπό του ιδιοκτήτου.

.....

(iii) Δια ουσιαστικάς και ριζικάς αλλαγάς συνεπαγόμενας την ριζικήν και ολικήν μετατροπήν τούτου δια σκοπούς αξιοποιήσεώς του».

To justify an order under section 11(1)(h)(iii), the owner is burdened to prove not only that the premises are reasonably required for substantial and radical alterations but also, that the changes must entail the radical and the total alteration of the building and must aim at the development of the property.

There is no corresponding provision in the English Legislation to the provisions of our s. 11(1)(h)(iii) and I have looked in the Greek Dictionaries for the meaning of the words used in this section.

In the Μεγάλο Λεξικό όλης της Ελληνικής Γλώσσης Δ. Δημητράκου, Volume 10, it is stated, «Ολικός:- ο ανήκων ή αναφερόμενος εις το όλο, ο καθολικός, ο πλήρης», and at Volume 12, «Ριζικός:- Ο ανήκων ή αναφερόμενος εις την ρίζαν, θεμελιώδης, βασικός, κύριος:» and in the Μεγάλο Λεξικό of the Modern Greek Language, A. Georgopapadakou, the meaning of the word «Ολικός:- αυτός που ανήκει ή αναφέρεται στο όλον, ο γενικός, καθολικός, πλήρης and the meaning of the word «ριζικός:- αυτός ανήκει ή αναφέρεται στην ρίζαν, ολικός, ολοκληρωτικός, πλήρης.»

The Rent Tribunal concluded that the premises are reasonably required for substantial and radical changes which, in my opinion, are inadequate to support a possession order in view of the prerequisites of s. 11(1)(h)(iii), as stated hereinabove; furthermore, I agree with the submission of counsel for the appellants that the contemplated alterations do not entail the radical and the total alteration of the building as provided for by s. 11(1)(h)(iii).

I think it is impossible to give an accurate and comprehensive definition of the alterations required to bring about the desired order under s 11(1)(h)(iii). The question is one of degree depending on the facts of a particular case.

Bearing in mind the meaning of the words used in the section and the facts of this case, as found by the Rent Tribunal, I have come to the conclusion that the alterations could not, under any circumstances, justify the making of the order for possession under the aforementioned section of the Law and for the reason, I would allow the appeal with costs.

Appeal allowed with costs.