

LEVEL TACHEXCAVS LTD.,

Appellants-Applicants,

v.

KYRIACOS KARGOTIS,

Respondent.

LEVEL
TACHEXCAVS
LTD.

v.

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(Civil Appeal No. 4859).

Rent Control—Business premises—Determination by the Court of rent payable in respect of business premises—Matters to be taken into consideration—Personal circumstances of the tenant or the landlord, nature of the business or work as well as the income therefrom, are relevant factors which must be put in the scales—The Rent Control (Business Premises) Law 1961 (Law No. 17 of 1961), section 7 (1) (2).

Statutory Tenancies—Determination of rent—Business premises—See supra.

Statutes—Construction of statutes—“In all circumstances” in section 7 (2) of the Rent Control (Business Premises) Law 1961—Personal circumstances of landlord as well as of the tenant included—See supra.

Words and Phrases—“In all circumstances” in section 7 (2) of the Rent Control (Business Premises) Law 1961 (Law No. 17 of 1961).

One of the main points—if not the main one—involved in this appeal is whether or not, on the true construction of section 7 (2) of the Rent Control (Business Premises) Law 1961 (*infra*), the trial Judge is empowered, for the purpose of determining the reasonable rent “in all the circumstances”, to take into consideration the personal circumstances of the landlord and the tenant, including tenant’s nature of business or work and his income therefrom. The Supreme Court, upholding in this respect the trial Judge, held that he has such powers or rather that it is incumbent on him to take into account such factors as aforesaid. The facts of the case are very shortly as follows :—

This is an appeal from a decision of a Judge in the District Court of Nicosia determining under the provisions of the Rent Control (Business Premises) Law 1961 (Law No. 17

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of 1961) the rent of a shop. The rent payable at the time of the application to the District Court was £6 per month. The landlord (appellant) applied on October 9, 1968 under section 7 of the statute to the District Court for the increase of the rent to £20 per month as from October 1, 1968. The learned trial Judge after hearing evidence decided that the landlord was entitled to an increase of 25% on the present rent and determined it to £7.500 mils per month as from December 1, 1969. In deciding as he did the Judge, apparently, was mainly influenced by the modest standard of the tenant's (respondent's) business and earnings. To the investment aspect of the case no reference was made ; nor did he refer to comparable rents in the vicinity. The landlord took this appeal from this decision. It was argued on his behalf, *inter alia*, that the Judge failed to consider duly material factors and that, in any event, he has no power under section 7 of the statute to take into consideration at all "factors such as the nature of the business or work of the tenant and the tenant's income from such business or work".

Section 7 (1) and (2) of the Law provides :

" 7 (1) It shall be lawful for the landlord or the tenant of any business premises if , to apply to the Court to determine the rent payable

(2) Where any such application is made to the Court, the Court shall consider it and, after making such inquiry as it may think fit , shall, either approve the rent payable under the tenancy or increase or reduce it to such sum as the Court may, *in all the circumstances*, think reasonable."

The Court, allowing the appeal and varying the order appealed from :

Held, (1). Considering the intention of the legislature from a perusal of the whole statute we would construe the expression "*in all the circumstances*" in section 7 (2) (*supra*) to include personal circumstances of the tenant and landlord, including the tenant's nature of business or work and his income therefrom, in addition to other relevant factors and circumstances, such as the age, character and neighbourhood of the premises, rents of comparable properties and other relevant criteria. This requires a subjective test ; and it is a question of degree, depending on the facts and circumstances of each particular case, how much weight is to be

given to the personal circumstances of the parties. But all relevant circumstances, including personal circumstances, have to be placed in the scales by the Judge in determining what is the reasonable rent of the premises in question.

(2) We would, therefore, allow the appeal ; and on the evidence on record we determine the application for increase of rent by fixing it at the rate of £7.500 mils per month from November 1, 1968 until October 30, 1970. Thereafter the rent to be increased to £10 per month for the next twelve months i.e. until October 30, 1971 after which time any party feeling aggrieved by this rent, in the circumstances prevailing at that time, to be at liberty to apply afresh to the District Court under section 7 of the statute (*supra*).

(3) The appellants will have one half of their costs in the appeal. The order for costs in the Court below to stand.

Appeal allowed. Order for costs as above.

Appeal.

Appeal by applicants against the judgment of the District Court of Nicosia (Santamas, Ag. D.J.) dated the 11th December 1969 (Application No. 18/68) determining under the provisions of the Rent Control (Business Premises) Law 1961 (Law 17 of 1961) the rent of a shop used as a business premises.

G. Ladas with Chr. Chrysanthou, for the appellant.

P. Frakalas, for the respondent.

The following judgments were delivered by :—

VASSILIADES, P. : This is an appeal from a decision of the appropriate judicial officer in the District Court of Nicosia, determining under the provisions of the Rent Control (Business Premises) Law 17 of 1961, the rent of a shop used as a business premises. The rent payable at the time of the application by the statutory tenant (the respondent herein, to whom I shall hereinafter refer as the tenant) was £6 per month. The landlord (the appellant herein) considering himself aggrieved by the quantum of the rent, applied on the 9th October, 1968, to the District Court under section 7 of the statute for the increase of the rent to £240 per annum, or £20 per month, as from October 1, 1968.

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The landlord's application was accompanied by a statement headed "statement of claim" containing allegations of fact and reasons for which the increase of rent was claimed. The tenant opposed the proceeding for increase, by filing on November 5, 1968, a statement in the nature of a pleading headed "defence".

It may be observed from the outset that an application under section 7 of the statute in question, is not a proceeding in the nature of a civil action, even if the definition of an "action" in Order 1, rule 2, of the Civil Procedure Rules, may be wide enough to cover it. Part II of the statute containing the provisions of sections 4, 5 and 6 indicates clearly I think, that it is a *sui generis* proceeding for the special purposes of this statute as set out therein by the legislator. The point was not argued and I would rather leave it at that, confining myself to the observation that such written statements put on the record of the proceeding by the parties, with copies to the other side, could be useful to the Judge dealing with the matter, provided that they are confined to allegations of relevant facts, avoiding generalities and argumentation.

The Judge appointed under section 4 (1) of the statute to deal with the matter, inspected the shop in the presence of the parties and their advocates; and heard from the witness box, the managing director of the landlord company; a valuer called in support of the application for increase of the rent; and the tenant who gave evidence in opposition.

The facts which emerge from the evidence are that the tenant was paying the same rent *i.e.* £6 per month, since January, 1956. The tenant stated that he first went into possession in 1948 at a rent of 30/- per month, which was increased by agreement to £6 per month when the shop was rebuilt in 1956. The evidence does not show whether the tenant occupied the shop under a lease in writing or otherwise; and on what terms. That useful material is entirely missing.

The shop has a small open space attached to it, described as a yard; and the size of it, as given by the valuer, is 12 1/2 × 18 1/2 ft., *i.e.* about 220 sq. ft., or 312 sq. ft., including the yard. Nothing was said as to the structural condition of the shop or its state of repair. It is part of a big building near the square of the new Municipal market.

The tenant uses the shop for running his small transport business, for the purposes of which he owns three vehicles

viz. one sewage tanker and two pick-up vans ; and employs the staff required. He uses the shop as an office during the day and as a garage at night. He stated that he keeps no books or other record for his business ; and gave his earnings on a rough estimate, at £45 per month. He denied that he earns much more than that, although he admitted that for the hire of his tanker on a Sunday, he asked the landlord to pay £20.

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The landlord company acquired the property in July 1967 for £80,000 apparently as an investment for development. There are 34 shops in the present structure, yielding rents amounting to £3,250 per annum. Aggrieved by the low rent of the shop in question and failing agreement with the tenant for a reasonable increase, the landlord applied in October 1968, to have the rent determined under the statute at £20 per month or £240 annually.

The landlord's valuer comparing the rents paid in that area within a radius of 150 yards and taking all other relevant, in his view, factors into consideration, assessed the "reasonable" rent of the shop at £12.500 mils per month.

The learned trial Judge decided that the landlord was entitled to an increase of 25% on the present rent and determined it at the rate of £7.500 mils per month, from December 1, 1969. In a concise and clear note, the Judge gave the reasons for his decision which he sought mainly in the nature of the tenant's business and his (the tenant's) own rough estimate regarding his earnings. To the valuer's assessment, the Judge referred as "right in principle"; but taking into consideration other factors as well, such as the tenant's business and his earnings, the Judge found himself unable to accept it. To the investment aspect of the case no reference was made at all in the Judge's reasons for his decision ; nor did he refer to comparable rents in the vicinity

From that determination of the rent, the landlord took the present appeal on the grounds stated in the notice filed. These may be summarised into :—(a) that the Judge's decision is against the weight and effect of the evidence ; (b) that he erred in finding the reasonable rent for the shop from factors such as the nature of the tenant's work and income ; and (c) that he ordered the increase as from the time of his decision instead of the time of the application.

After hearing counsel on both sides I have no difficulty in reaching my conclusions as to the disposal of the appeal.

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I take the view that in “making such inquiry as he may think fit” for the purposes of determining the rent of a business premises under section 7 of the statute in question, the Judge appointed under section 4, must act judicially; and in making use of his very wide powers thereunder, he must be guided by the object of the statute and the intention of the legislature to protect the tenant from eviction from his business premises, with all due regard to matters “connected therewith and incidental thereto” as put before him by the parties.

These matters include, in my view, the nature of the tenant’s business; but they also include the market value of the property and its rental value; the capital investment which it represents and its development prospects within the landlord’s proprietary right, which are put under certain limitations and certain judicial control for the sake of the general welfare of the State; but are fundamentally protected under the constitution and cannot be completely ignored or put in cold storage indefinitely. They must, I think, be taken into consideration together with the nature of the tenant’s business and his income therefrom, (found on proper and satisfactory evidence, lacking in this case) and assessed and weighed with other relevant matters in the interests of the community as a whole; and these, no doubt, include its development and progress. I am moreover inclined to the view that in the circumstances of this case, the increase in the rent should take effect from the first payment after filing of the application.

I would, therefore, allow the appeal and determine the application for increase of rent by fixing the rate at £7.500 mils per month from 1st November, 1968, for a period of two years *i.e.* until the 30th October, 1970. Thereafter the rent to be increased to £10 per month for the next twelve months, *i.e.* until the 30th October, 1971, after which time, any party feeling aggrieved by this rent, in the circumstances prevailing at that time, to be at liberty to apply afresh for determination of the “reasonable rent” under section 7.

JOSEPHIDES, J. : I agree with the judgment just delivered by the learned President of the Court, and I would like to add this.

The main ground of appeal was that the trial Court in assessing the reasonable rent under the provisions of the Rent Control (Business Premises) Law, 1961, was wrong in principle in taking into consideration “factors such

as the nature of the business or work of the tenant and the tenant's income from such business or work". Section 7(1) and (2) of the Law read as follows :

" 7.—(1) It shall be lawful for the tenant or the landlord of any business premises, if he considers himself to be aggrieved, to apply to the Court to determine the rent payable in respect of such business premises.

(2) Where any such application is made to the Court, the Court shall consider it and, after making such inquiry as it may think fit, and giving to each party an opportunity of being heard, shall either approve the rent payable under the tenancy or increase or reduce it to such sum as the Court may, in all the circumstances, think reasonable".

It will be observed that the Court is empowered to increase or reduce the rent to such sum "as the Court may, in all the circumstances, think reasonable".

Considering the intention of the legislature in enacting this statute from a perusal of the whole statute, I would construe the expression "in all the circumstances" to include personal circumstances of the tenant and landlord, including the tenant's nature of business or work and his income therefrom, in addition to other relevant factors and circumstances, such as the age, character and neighbourhood of the premises, rents of comparable properties and other relevant criteria. This requires a subjective test ; and it is a question of degree, depending on the facts and circumstances of each case, how much weight is to be given to the personal circumstances of the parties. But all relevant circumstances, including personal circumstances, must be placed in the scales by the Judge in determining what is the reasonable rent of the premises in question. If it were the intention of the legislature to exclude the personal circumstances of the parties, then the draftsman would have used a different language as in the case of the Compulsory Acquisition of Property Law, 1962, where the value of the property compulsory acquired is defined as the market value of such property, and no reference is made to "all the circumstances", as in the statute under consideration. Compare also the provisions of section 27(1) of the English Rent Act 1965, in which "personal circumstances" are expressly excluded from consideration in assessing a "fair" rent.

Before concluding I would like to make the following observation with regard to the evidence given by experts

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in such cases. In the present case the expert, who, admittedly, was an experienced valuer, stated in evidence that he was of opinion that a reasonable rent, in the circumstances, would be £12.500 mils per month. He did not give any facts, figures, or circumstances justifying such opinion. I think that the Judge ought to have required the expert to state in evidence the basis of his valuation, including, *inter alia*, rents of comparable premises and other relevant factors, which would help the Judge in determining what was the reasonable rent in all the circumstances of the case.

HADJIANASTASSIOU, J. : I agree with both the judgments of my learned brothers, but I would like to add a few words of my own.

The main question in this appeal involves a consideration of the provisions of section 7 (2) of the Rent Control (Business Premises) Law, 1961, (Law No. 17/1961). It reads :—

“(2) Where any such application is made to the Court, the Court shall consider it and, after making such inquiry as it may think fit, and giving to each party an opportunity of being heard, shall either approve the rent payable under the tenancy or increase or reduce it to such sum as the Court may, in all the circumstances, think reasonable.”

It is not in dispute that the business premises in question were rented to the defendant in January, 1956, for the agreed sum of £6.000 mils per month ; and that at the expiration of the tenancy the defendant continued to remain in possession of the business premises as a statutory tenant. On October 9, 1968, the plaintiff, feeling aggrieved about the rent, applied to the District Court of Nicosia to determine the rent payable in respect of such business premises. On December 11, 1969, the trial Court, after hearing evidence, decided that the rent payable under the statutory tenancy be increased to £7.500 mils per month as from December 1, 1969.

The main argument of counsel for the appellants was that the trial Court, in assessing what was the reasonable rent payable in respect of the business premises occupied by the defendant/respondent, erred in taking into consideration the personal matters of the tenant, *viz* : the tenant's income from his work or profession.

There is no doubt that the object of this law is to provide machinery for the purpose of securing the availability of business premises within the controlled area, at equitable

rents, and the restriction of ejection from such business premises. But at the same time, I would like to state that although it is true that this law is for the protection of the tenants, nevertheless, it is not for the penalizing of landlords.

With this in mind, I am of the view, that the legislature under the provisions of section 7 (2) of our law has given to the trial Court, wide powers in deciding what would be the reasonable rent of business premises in each particular case, with a view to reducing it or increasing it to such sum, after taking into consideration all the circumstances. In my opinion, the words "all the circumstances" must mean that the Court should take into consideration the personal circumstances, both of the tenant and of the landlord, including the nature of the work or of the profession carried out in such premises by the tenant, as well as the income derived therefrom, in addition to other relevant factors and circumstances. Furthermore the Court should also take into consideration the age, character and locality of such business premises, as well as the rents of comparable properties in that neighbourhood at the time of making such inquiry.

As regards the argument of counsel that the Court ought to have followed the provisions of section 27 (1) of the English Rent Act 1965, with respect to counsel's argument, I find it untenable, because the "personal circumstances" are expressly excluded from consideration in assessing what is known in the Act as "fair rent". The position in Cyprus is, however, different because no such provision is to be found in our Law. I would, therefore, dismiss this contention of counsel for the appellants.

I also agree that the increase of rent should start as from October 1, 1968, and I would, therefore, allow the appeal.

VASSILIADES, P. : In the result, the rent is increased from £6 to £7.500 mils per month from 1st November, 1968, to 30th October, 1970. Thereafter the rent to be increased to £10 per month from 1st November, 1970 to 30th October, 1971. Thereafter, each party may again apply for reconsideration under section 7 of the statute. The appellants to have one half of their costs in the appeal. The order for costs in the District Court to stand.

Appeal allowed. Order for costs as above.

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