EVANTHIA HJIEVANGELOU,
Appellant-Defendant,

v.

KERMIA CO. LTD.,
Respondents-Plaintiffs.

(*Civil Appeal No.* 4954).

Landlord and Tenant—Statutory Tenant—Order for recovery of possession on the ground of demolition of the premises—Section 16(1)(i) *of the Rent Control Law, Cap.* 86 (*as amended by the Rent Control (Amendment) Law,* 1968 (*Law* 8 *of* 1968)—*The tenancy being a statutory one and the landlord having obtained the relevant building permit for a new building, the trial Judge was right in granting the said order on this ground.*

Statutory Tenancy—Rent—Acceptance of rent by the new owners of the premises—Does not create a new contractual tenancy—See also supra.

Construction of documents—Court settlement—Agreement to stay in the premises as "statutory tenant from month to month for the duration of the Rent Restriction law . . . . . " does not create a contractual tenancy—The tenant remaining in the premises as the statutory tenant thereof—Therefore, the said settlement does not exclude eviction of the statutory tenant on a ground specified by the relevant law (such as the one provided in section 16(1)(i) *of Cap.* 86, supra).

Rent control—See supra.

Rent restriction—See supra.

Statutory Tenancy—Nature of—Status of irremovability.

This is an appeal by the defendant-tenant against an order of the District Court of Famagusta directing him to vacate a house at No. 48 Maria Synglitiki Street, Famagusta—occupied by him—and deliver up possession of the premises to the plaintiffs-landlords (now respondents) ; the plaintiffs claimed that the defendant (appellant) was the statutory tenant of the premises and that they required them, as landlords, for demolition, basing thus their claim on section 16(1)(i) of the Rent Control Law, Cap. 86 (as amended). The trial Court made the order for possession on that ground.

The main point on which this appeal has been argued on behalf of the appellant (defendant-tenant) was that the trial Court could not make the order because the appellant was not a statutory tenant, but has been, and she still is, a contractual tenant from month to month, her contract having not yet been determined.

This contention was based on the terms of a settlement arrived at in Civil Action No. 40/1948 before the District Court of Famagusta, and which reads as follows :

" Action settled as follows :

.....Defendant (appellant) remains statutory tenant from month to month for the duration of the Rent Restriction Law at the termination of which she will be allowed three months for the evacuation of the premises in dispute."

Dismissing the appeal and leaving undisturbed the order for possession, the Supreme Court :—

Held, (1). In our view the only proper construction of the aforequoted settlement is that the appellant (tenant) remained, as expressly stated therein, a statutory tenant for the duration of the " Rent Restriction Law ", that being the legislation creating a status of irremovability of the appellant as an occupier of the premises in question (see, in respect of the nature of a statutory tenancy : *Keeves* v. *Dean* [1924] 1 K.B. 685, and *Marcroft Wagons Ltd.* v. *Smith* [1951] 2 K.B. 496). As stated in the recent case of *Charles Clay and Sons Ltd.* v. *British Railways Board* [1971] 1 All E.R. 1007, " there being no authority to prevent us, it is preferable as a matter of justice to hold the parties to their clearly expressed bargain "; and so doing we treat the appellant as a statutory tenant, and not a contractual one.

(2) Once we are of the view that the appellant has all along been a statutory tenant and, as such, liable to be evicted for any reason provided for in the relevant Law, we need not deal with the issue as to whether the said settlement in action No. 40/1948 (*supra*) is void for uncertainty.

(3) We cannot uphold as valid the contention of counsel for the appellant that acceptance of rent by the respondents from the appellant, after the former became owners of the premises, resulted in a contractual monthly tenancy between the parties. It is well settled that if the acceptance of rent can be explained on some footing other than the creation

of a contractual tenancy, for example, by reason of an actual or possible statutory right to remain—as in the present case—no new tenancy will be inferred (see The Rent Acts by Megarry, 10th ed. Vo. 1, p. 229).

Appeal dismissed. No order as to costs of the appeal.

Cases referred to :

Keeves v. *Dean* [1924] 1 K.B. 685 ;

Marcroft Wagons Ltd. v. *Smith* [1951] 2 K.B. 496 ;

Charles Clay and Sons Ltd. v. *British Railways Board* [1971] 1 All E.R. 1007 ;

Kontou v. *Parouti*, 19 C.L.R. 172 ;

Lace v. *Chantler* [1944] K.B. 368.

Appeal.

Appeal by defendant against the judgment of the District Court of Famagusta (S. Demetriou, D.J.) dated the 16th December, 1970, (Action No. 2311/69) whereby he was adjudged to evacuate and deliver vacant possession of a house at Famagusta which he was occupying.

A. HadjiIoannou, for the appellant.

G. Michaelides, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by :—

TRIANTAFYLLIDES, P. : In this case the appellant, defendant in civil action No. 2311/69 before the District Court of Famagusta, appeals from the decision given in that action on the 16th December, 1970. By means of such decision the respondents in this appeal, plaintiffs in the action, have obtained an order for the recovery of possession of a house (No. 38, Maria Synglitiki Street) in Famagusta, which is occupied by the appellant. In granting the order the learned trial Judge suspended its operation, as he was entitled to do, for nine months and it is, thus, due to become effective on the 15th September, 1971.

The respondents had based their claim for possession on section 16 (1) (i) (previously section 18 (1) (i)) of the Rent (Control) Law, Cap. 86, as amended by the Rent (Control) (Amendment) Law, 1968 (8/68) ; they claimed that the appellant was the statutory tenant of the premises and that they required them, as landlords, for demolition and the trial Court made the order for possession on that ground.

The main point on which this appeal has been argued on behalf of the appellant is that the Court below could not make the order because the appellant was not a statutory tenant, but has been, at all material times, and she still is, a contractual tenant from month to month, her contract having not yet been determined.

This contention, which was not put forward in exactly this way during the trial of the case, when the appellant was represented by other counsel, is based on the terms of a settlement arrived at in Civil Action No. 40/48 before the District Court of Famagusta. The settlement, which was reached on the 21st September, 1948, reads as follows :—

> " Action settled as follows :—1) Case withdrawn against defendant No. 1 "—(who is not involved in the present proceedings)—"2) Defendant No. 2" (the appellant)—"remains statutory tenant from month to month for the duration of the Rent Restriction Law at the termination of which she will be allowed three months for the evacuation of the premises in dispute 3) No order as to costs. Case dismissed on the above terms of settlement."

Counsel who appeared for the appellant before the trial Court in the present case made the following statement :—

> " The defendant's allegation is that she is holding these premises as a statutory tenant subject to the terms contained in the settlement arrived at in action No. 40/48."

In our view the only proper construction of the aforequoted settlement is that the appellant remained—(as expressly stated therein)—a statutory tenant for the duration of the " Rent Restriction Law ", that being the legislation creating a status of irremovability of the appellant as an occupier of the premises in question (see, *inter alia*, in respect of the nature of a statutory tenancy *Keeves* v. *Dean* [1924] 1 K.B. 685, and *Marcroft Wagons Ltd.* v. *Smith* [1951] 2 K.B. 496).

As stated in the recent case of *Charles Clay & Sons Ltd.* v. *British Railways Board* [1971] 1 All E.R. 1007, " there being no authority to prevent us "—and none has been cited to us—" it is preferable as a matter of justice to hold parties to their clearly expressed bargain " ; and so doing we must treat the appellant as a statutory, and not a contractual, tenant. The provision in the settlement of action No. 40/48 to the effect that she would be allowed three months for the evacuation of the premises after the termination of the " rent Restriction Law " cannot, in our opinion, override the express statement therein that she " remains statutory tenant ". It follows as an inevitable logical consequence of this that she was all along liable to be evicted from the premises for any reason provided for in the relevant legislation.

Once we are of the view that the appellant has all along been a statutory tenant of the premises, we need not deal with the issue as to whether the settlement in action No. 40/48 is void for uncertainty as to its duration (in the light of case-law such as *Kontou* v. *Parouti*, 19 C.L.R. 172, *Lace* v. *Chantler* [1944] K.B. 368 and *Charles Clay & Sons Ltd.*, *supra*).

In view of the status of the appellant as a statutory tenant it was not necessary for the predecessors in title of the respondents to send her a letter on the 24th July, 1968, by means of which a calendar month's notice to quit the premises was given to her. It seems that this letter was addressed to her *ex abundanti cautela* in view of the expression " from month to month " in the settlement of action No. 40/48.

Nor can we uphold as valid the contention of counsel for the appellant that acceptance of rent by the respondents from the appellant, after the former became owners of the premises, resulted in a contractual monthly tenancy between the parties : It is well settled that if the acceptance of rent can be explained on some footing other than the creation of a contractual tenancy, for example, by reason of an actual or possible statutory right to remain—as in the present case—no new tenancy will be inferred (see The Rent Acts by Megarry, 10th ed., vol. 1, p. 229).

As we have found that the appellant was at the material time a statutory tenant liable to eviction under the provisions of the relevant legislation and it is not in dispute that the respondents have obtained from the appropriate authority in Famagusta a permit to demolish the premises

and, also, a building permit for a new building to be erected there, it is quite clear that the learned trial Judge was right in making an order for recovery of possession on this ground in favour of the respondents. It follows, therefore, that this appeal fails and has to be dismissed accordingly.

As the Court below has made no order as to costs we do not feel inclined to make any order regarding the costs of this appeal.

Appeal dismissed. No order as to costs of the appeal.