

NINA P. IACOVIDOU,

*Appellant—Applicant,*

v.

ANDREAS CONSTANTINOU,

*Respondent.*

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NINA P.  
IACOVIDOU  
v.  
ANDREAS  
CONSTANTINOU

(Civil Appeal No. 5299).

5 *Landlord and tenant—Rent control—Business premises—Determination by Court of rent payable in respect of business premises and date of taking effect of decision—Discretion of trial Judge—Principles on which Court of Appeal interferes with exercise of such discretion—Matters to be taken into consideration by trial Court—Section 7(1) and (2) of the Rent Control (Business Premises) Law, 1961 ( Law 17 of 1961).*

10 *Costs—Discretion of trial Judge—Claim for increase of rent by £42—Amount allowed £12—No wrong exercise of discretion by assessing costs at £15.*

15 The appellant, who is the owner of business premises at Limassol, applied on the 1st December, 1973, under s. 7(1) of the Rent Control (Business Premises) Law, 1961 (quoted in full in the judgment at p. 102 *post*) for an order determining the rent payable in respect of such premises by the respondent, who was occupying them as statutory tenant at a monthly rent of £28. Applicant claimed an increase of £42 per month but the Court allowed only £12.

Counsel for the appellant contended:

- 20 (a) That the amount of the increase was manifestly small because it was much lesser than the prevailing rents for shops in the area; and because the Court failed to pay due regard to relevant factors such as the capital value of the premises in question, the difference in the value of money between the years 1961 and 1973, the personal circumstances of the appellant and the fact that she is  
25 indebted in the sum of £8,000 balance due on the amount borrowed for the construction of the premises in question.

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(b) That the increase of rent should have been as from the 1st December, 1973, the date of the filing of the application and not the 1st of January, 1974, as decided.

(c) That although the appellant succeeded in her application and the rent was increased, the Court deprived her in substance of her costs which was wrong in law.

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*Held*, (1)(a) Bearing in mind the principles on which the trial Court exercises its discretion in proceedings of this nature and the matters to be taken into consideration in determining the rent payable (see p. 103 of the judgment *post*), the factual aspect of this case, the striking contrast between the financial position of the appellant and the respondent, the prevailing rents in the area, and above all, that this is a case of exercise of judicial discretion, the first ground of law relied upon in this appeal fails.

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(1)(b) The evaluation of the relevant factual situation is primarily the task of a trial Court and this Court is particularly reluctant to reverse a trial Court on the question of what, in all the circumstances, it thinks as being the reasonable amount of the increase or reduction thereof. In order that this Court should interfere with such a conclusion, it should have been satisfied that the trial Court has acted upon a wrong principle of law or has misapprehended the facts or has made a wholly erroneous estimate of the reasonable rent, which is not the case.

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(2) The date as from which a decision under section 7 of the Law is to take effect, is a matter relating to the exercise of judicial discretion and we see no reason to interfere with the date as from which the increase was ordered to be payable.

(3) Though no reasons are given in the judgment for fixing the costs of the application, it should not be lost sight of that the amount of the increase claimed was £42 per month, whereas the amount allowed was £12 per month; there does not seem to us to be any wrong exercise of discretion in the matter by the Judge in assessing the costs at the figure of £15.

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*Appeal dismissed with costs.*

Cases referred to:

*Level Tachexcavs Ltd. v. Kargotis* (1970) 1 C.L.R. 163.

**Appeal.**

Appeal by applicant against the judgment of the District

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Court of Limassol (Hadjitsangaris, S.D.J.) dated the 23rd March, 1974, (Application No. 47/73) by virtue of which the monthly rent payable by the respondent, as a statutory tenant of one of her shops, was increased from £28.- per month to

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*J. Potamitis*, for the appellant.

*P. Pavlou*, for the respondent.

STAVRINIDES, J.: The judgment of the Court will be delivered by Mr. Justice A. LOIZOU.

20 A. LOIZOU, J.: The appellant appeals from the judgment of a member of the District Court of Limassol who has been appointed under section 4(1) of the Rent Control (Business Premises) Law, 1961, (Law No. 17/61), (to be referred to hereinafter as "the Law"), which covers cases of adjustment of rents

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The appellant is the owner of premises situated at Anexartisia Street in Limassol, and the respondent, a statutory tenant of one of her shops which he occupied since 1961 at the rent of £28 per month, then agreed under a contract of lease.

20 The application was filed on the 1st December, 1973 under section 7 of the Law and the amount of the increase prayed for was £42 per month, but after hearing the case, the learned trial Judge, for the reasons given in a meticulously written judgment, increased the rent to £40 per month, payable as

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The appellant is married and her husband earns £137 per month. Her income is in the region of £230 per month, and their only child is a pupil at the Gymnasium on whose education the appellant spends some £20 per month. The shop in question is part of premises consisting of six shops and two flats, constructed in the year 1960-1961, at a cost of £16,000; their present value was, however, given by the appellant as being in the region of £200,000.

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35 The respondent is a small-way photographer, married with four children, of the ages of twelve to seventeen and his income, according to the Court's finding, amounted to £100 per month.

Evidence was led regarding the rents paid in respect of seven shops which were comparable, in the suggestion of the parties,

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to the subject property. All seven are situated in Anexartisia Street, one of the most commercial roads of Limassol town, which, since 1961, has developed into a more highly commercial area than it used to be, a factor that had over the years a corresponding increase on the rental value of premises in that road. Five of them were referred to by witnesses called on behalf of the applicant and their rents were in the region of £45 to £55 per month, agreed between the landlords and tenants in the respective cases for the years 1970, 1971, 1972 and 1973, whereas in respect of the remaining two shops, referred to by witnesses called on behalf of the respondent, the rents payable were £20 and £37 per month agreed in October, 1971 and January, 1973 respectively. In fact, the learned trial Judge made a detailed comparison of each one of these shops with the subject property.

The appeal has been argued on three main grounds, the first one was that the amount of the increase was manifestly small, as it was much lesser than the prevailing rents for shops in the area, and covered by the Rent Restriction Law and the Court failed to pay due regard to relevant factors such as the capital value of the applicant's premises, the difference in the value of money between the years 1961 and 1973, the personal circumstances of the appellant and the fact that she is indebted in the sum of £8,000 balance due on the amount borrowed for the construction of the premises in question.

The second ground was that the increase of rent should have been as from the 1st December, 1973, the date of the filing of her application and not the 1st of January, 1974, as decided, and the third one was that although the appellant succeeded in her application and the rent was increased, the Court deprived her in substance of her costs which was wrong in law.

The learned trial Judge referred and drew assistance from the principles enunciated in the case of *Level Tachexcavs Ltd. v. Kyriacos Kargotis* (1970) 1 C.L.R. p. 163, to which we shall be shortly reverting, but before doing so, it will be useful to refer to the relevant section of the Law, namely section 7(1) and (2) thereof, which reads 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.

5 (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.”

10 The material part of it, in our view, is the phrase “as the Court may, in all the circumstances think reasonable”. As it is always the case, where such a discretion is given to the Courts by the legislator, it is difficult to lay down any accurate test regarding its exercise. In such cases, it is necessary that the Courts be guided above all, by the purpose for which the particular law was enacted and of course by a number of surrounding circumstances that may assist a Judge in arriving at a just and  
15 fair decision. The purpose of a rent restriction law is, obviously, to control, as it says, in a way, tenancies and the rents payable, by preventing arbitrary increases or unchecked rises and also to protect from eviction for grounds other than those enumerated in such law.

20 The matters to be taken into consideration so lucidly set out in the three judgments in the *Kargotis* case (*supra*), may be summed up as being matters relating to the character of the premises, which include its value and development potentialities, matters relating to the landlord and the tenant including the  
25 nature of the business carried out and their respective income, their financial position in general and the circumstances prevailing in the area, particularly rents of comparable properties, subject of course to the overriding object of the statute that the reasonable rent to be determined by the Court should not be  
30 equalized to a rent obtainable in the open market.

Bearing in mind the above principles and the factual aspect of this case, the striking contrast between the financial position of the appellant and the respondent, the prevailing rents in the area, and above all, that this is a case of exercise of judicial  
35 discretion, the first ground of law relied upon in this appeal should fail. The evaluation of the relevant factual situation is primarily the task of a trial Court and this Court is particularly reluctant to reverse a trial Court on the question of what, in all the circumstances, it thinks as being the reasonable rent to be  
40 approved or the reasonable amount of the increase or reduction thereof. In order that this Court should interfere with such a conclusion, it should have been satisfied that the trial Court has

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acted upon a wrong principle of law or has misapprehended the facts or has made a wholly erroneous estimate of the reasonable rent, which is not the case.

Regarding the second ground, namely the date as from which the increased rent should have been ordered to be payable it was said in the *Kargotis* case (*supra*) at p. 168 by Vassiliades, P. that he was inclined to the view that in the circumstances of that case, the increase in the rent should take effect from the first payment after the filing of the application. Apparently, this course was adopted by the learned trial Judge in deciding that the increase should take effect as from the 1st January, 1974, that is to say, the first of the month next to the filing of the application.

We are of the view that the date as from which a decision under section 7 of the Law is to take effect, is a matter relating to the exercise of the judicial discretion and we see no reason to interfere with the date as from when the increase was ordered to be payable.

Finally, though no reasons are given in the judgment for fixing the costs of the application ordered in favour of the applicant at £15, it should not be lost sight of, that the amount of the increase claimed was £42 per month, whereas the amount allowed was £12 per month and there does not seem to us to be any wrong exercise of discretion in the matter by the Judge in assessing the costs at that figure.

For all the above reasons, the present appeal is dismissed with costs in favour of the respondent.

*Appeal dismissed with costs.*