1979 February 22

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

YIANGOS MICHAELIDES,

Appellant (Defendant),

v.

ANDREAS IACOVIDES,

Respondent (Applicant).

.. (*Civil Appeal No.* 5896).

Landlord and tenant—Statutory tenancy—Recovery of possession—Premises reasonably required by landlord for substantial alteration or reconstruction—Section 16(1)(h) *of the Rent Control Law,* 1975 (*Law* 36/75)*—Conversion of two shops into one—Whether proposed work a substantial alteration or reconstruction prima facie a question of degree and fact—Once there was clearly evidence to support trial Judge's finding that the premises are reasonably required by landlord for substantial alteration or reconstruction in such a way as to affect them and once the landlord has given the statutory notice, Court of Appeal will not interfere with order of possession.*

The respondent in this appeal (applicant in the Court below) was the owner of two adjoining shops at Ktima one of which has since 1957 been leased to the appellant. After obtaining a permit from the appropriate authority for the carrying of certain alterations to the two shops he gave notice to the appellant, under section 16(1)(h)* of the Rent Control Law, 1975 (Law

* Section 16(1)(h) reads as follows:

"16(1) No judgment or order for the recovery of possession of any dwelling-house or shop, to which this Law applies, or for the ejectment of a tenant therefrom, shall be given or made except in the following cases:-

.....

(h) Where the dwelling-house or shop is reasonably required by the landlord for the substantial alteration or reconstruction thereof in such a way as to affect the premises or for the demolition thereof, and the Court is satisfied that the landlord has, where necessary, obtained the necessary permit for such alteration, reconstruction or demolition and has given to the tenant not less than three months' notice in writing to vacate the premises."

36/75), requiring him to vacate the premises on the ground that they were required by him for substantial alteration or reconstruction

The alteration sought intended to convert the two shops into one and the opening of both shops on two streets would substantially change, on the front part of the shops some pillars had to be erected to support the weight of the top floor; the supporting wall had to be demolished and the whole area would be forming one shop The two shops would change appearance, character and area, there would be left one door for one big shop and show windows with pillars to support the weight

Neither of the parties relied on hardship, and the trial Judge having reached the conclusion that the landlord had established to his satisfaction that he was genuinely interested in carrying out the substantial alterations referred to and that there was reasonable prospect that he could be able to do so granted the order of possession applied for

Upon appeal counsel for the appellant (tenant) mainly contended:

(a) That the trial Judge erroneously reached the conclusion that the alterations proposed to be carried out by the landlord on the promises were substantial alterations and/or alterations entitling him to recover possession of the said premises under the provisions of section 16(1)(h) of Law 36/75

(b) That in the light of the prevailing circumstances and particularly because the new law enacted remained almost the same since 1941, the Court should take the view that the order of possession opens the door to the landlords to evict their tenants, thus contravening the intention of the legislature

(c) That the trial Judge wrongly relied on the case of *Bewley (Tobacconists) Ltd* v. *British Bata Shoe Co Ltd.* [1959] 1 W L R 45 because the facts* were not the same and because the prevailing conditions in England are not the same

* See the facts of this case at p 129 *post*

Held, dismissing the appeal (1) that though this Court agrees that the door will be open to the landlords, nevertheless once the landlord in this case has established that the shop is reasonably required by him for substantial alterations or reconstruction in such a way as to affect the premises, and the Court is satisfied that he has given to the tenant 3 months' notice in writing to vacate the premises, this Court does not think that it can interfere with the finding of the trial Judge once the law says clearly that the landlord has such a right

(2) That the trial Judge rightly and correctly followed the *Bewlay* case (*supra*) as well as the Cyprus cases of *Yerasimou* v *Rousoudhiou* (1974) 1 C L R 107 and *Kontou* v *Solomou* (1978) 1 C L R 425, that he has not misdirected himself because from the evidence adduced, and which he accepted, it was clear that the landlord reasonably required the shop in question and that the proposed works to be carried out were of a substantial alteration affecting the premises and the landlord could not reasonably do so without obtaining possession of the shop in question, and that from the scheme of the Law, as there laid down, it was clear, apart from authority, that once any one of those grounds was established, the landlord could succeed

(3) That the trial Judge held that the work did fall within the language of section 16(1)(h) of Law 36/75 and whether the work proposed is or involves alteration or reconstruction of a substantial part of the premises is prima face a question of degree and fact and, therefore, in the absence of misdirection or evidence contrary to the conclusion reached this Court will not interfere, and that since there was clearly evidence to support a conclusion in favour of the landlord, this appeal must be dismissed accordingly

Appeal dismissed

Cases referred to

Bewlay (Tobacconists) Ltd v *British Bata Shoe Co Ltd* [1959] 1 W L R 45,

Yerasimou v *Rousoudhiou* (1974) 1 C L R 107,

Kontou v *Solomou* (1978) 1 C L R 425

Appeal.

Appeal by the tenant against the judgment of the District Court of Paphos (Demetriou, S.D.J) dated the 14th November,

1978, (Rent Control Appl. No. 24/58) whereby he was ordered to vacate and deliver vacant possession of a shop situated at Paphos.

A. Markides, for the appellant.
L. N. Clerides, for the respondent.

HADJIANASTASSIOU J. gave the following judgment of the Court. The question which is raised in this case is whether the applicant, Andreas Iacovides, the owner of a shop situated at Ktima, which the respondent occupies as a statutory tenant, was entitled to an order of possession.

The facts are these:-

The applicant is the owner of the shop which was originally leased to the respondent in 1957. That shop, together with the adjoining one, were owned by applicant's father until 1964, when both shops were transferred to the applicant. Because the father retired, being a lawyer, he vacated his office and the applicant decided to carry out alterations to the two shops. He applied to the appropriate authority, the Municipality of Paphos, for a permit to carry out the said alterations. The permit was granted to him on August 29, 1977.

On September 8, 1977, the applicant addressed a letter to the respondent, Yiangos Michaelides, informing him to vacate the office in question not later than January 1, 1978, and the reason given was that he had secured a permit to carry out certain alterations. The said notice was given under the provisions of s. 16(1)(h) of Law 36/75. It appears further that the respondent refused to comply with the request of the applicant in that notice, and on June 1, 1978, the applicant, relying on those statutory provisions, claimed that the premises were reasonably required by him for substantial alteration and reconstruction.

Section 16(1)(h) says that:-

"16.(1) No judgment or order for the recovery of possession of any dwelling-house or shop, to which this Law applies, or for the ejectment of a tenant therefrom, shall be given or made except in the following cases:-

.....

(h) where the dwelling-house or shop is reasonably required by the landlord for the substantial alteration or

reconstruction thereof in such a way as to affect the premises or for the demolition thereof, and the Court is satisfied that the landlord has, where necessary, obtained the necessary permit for such alteration, reconstruction or demolition and has given to the tenant not less than three months' notice in writing to vacate the premises."

In support of the allegation of the applicant that he was going to carry out substantial alterations to both shops, and that the respondent was required to vacate the premises within 3 months, Andreas Christodoulides, the Municipal Engineer, told the Court on September 26, 1978, that the alteration sought intended to convert the two shops into one; and that the alterations were substantial, because the openings of both shops on the two streets, would be substantially changed. When those alterations would have been completed, on the front part of the shops, some pillars had to be erected to support the weight of the top floor. The supporting wall would be demolished and, in view of the alterations, the whole area would be forming one shop. The shops, after those alterations, would change appearance, character and area. In view of those alterations, the shop in question will leave one door for one big shop and show windows with pillars to support the weight. In fact, the shop occupied by the respondent will be closed and the main door will be from the other side of that shop, *viz.*, from the shop now on the corner of the two streets. Finally, he said that apart from the alterations already carried out, the alterations would cost about £1,000.-

On the contrary, the respondent called Aleccos Vaklias, a civil engineer to contradict the evidence of the witness for the applicant, who said that the whole thing would cost about £600.-. He further said that because there is a scarcity in offices, the respondent would not find any other shop for his purposes.

The respondent, as it was natural, opposed the application and explained to the Court that it was difficult to find another shop in that area, and that the purpose of the applicant in demolishing the wall was to increase the rent after turning the two shops into one.

Then the Court, quite rightly in our view, put the question to

both counsel whether they were relying on the ground of hardship, and the reply was in the negative.

The learned trial Judge, having considered the evidence before him, reached the conclusion that the applicant had established to his satisfaction that he was genuinely interested in carrying out the substantial alterations referred to, and that there was reasonable prospect that he would be able to do so. With that in mind, he issued the order applied for suspending at the same time the operation of the order for a period of 6 months from that date to afford the respondent the opportunity to re-establish his business elsewhere at Paphos.

On appeal, Mr. Markides in a full and able argument, contended that the trial Judge erroneously reached the conclusion that the alterations proposed to be carried out by the respondent-applicant on the premises were substantial alterations; and/or alterations entitling him to recover possession of the said premises under the provisions of s. 16(1)(h) of the Rent Control Law, 1975. Counsel further argued that in the light of the prevailing circumstances and particularly because the new law enacted remained almost the same since 1941, the Court should take the view that the order granted relying upon that law, opens the door to the landlords to evict their tenants, thus contravening the intention of the legislature.

We have considered very carefully the argument put forward by counsel, and although we agree with him that the door will be open to the landlords, nevertheless, we think that once the landlord has established that the shop is reasonably required by him for substantial alterations or reconstruction in such a way as to affect the premises, and the Court is satisfied that he has given to the tenant the statutory 3 months' notice in writing to vacate the premises, we do not think that we can interfere with the finding of the learned trial Judge once the law says clearly that the landlord has such a right.

There was a further complaint by counsel to the effect that the learned Judge wrongly relied in following the case of *Bewlay (Tobacconists) Ltd* v. *British Bata Shoe Co. Ltd.*, [1959] 1 W.L.R. 45, because the facts were not the same and because the prevailing conditions in England are not the same as in Cyprus.

Turning now to the case of *Bewlay (Tobacconists) Ltd.* (*supra*), the landlords of a retail shop who owned and occupied the adjoining shop gave notice to the tenants determining the tenancy. The tenants applied to the County Court under the Landlord and Tenant Act, 1954, for the granting of a new lease. The landlords opposed the application on the ground that on the termination of the tenancy, they intended to demolish and reconstruct the premises or a substantial part thereof, and could not reasonably do so without obtaining possession. The scheme was to amalgamate the two self-contained shops into one shop. It was proved to the satisfaction of the Judge that the landlord intended, *inter alia*, to reconstruct an entirely new shop front, involving the abolition of the existing means of access to the street, and to remove three-quarters of the dividing wall between the two shops, which necessitated alterations to some of the pillars supporting the ceiling. The learned Judge considered that the proposed work involved both the demolition and reconstruction of a substantial part of the premises, and, accordingly, he refused the tenants' application.

In dismissing the appeal, it was held that there was evidence to support the Judge's finding of fact, and that he applied the correct test. He was entitled to look at the totality of the work which was proposed to be done, in order to decide whether as a matter of fact and common sense, those proposals came within the scope of paragraph (f) of s. 30(1) of the Landlord and Tenant Act of 1954.

Lord Evershed, M.R. dealing with the single point whether the work which the landlords have admittedly proved that they intend to do on the termination of the tenancy, is of a kind covered by the language of paragraph (f) of sub-section 1 of section 30 of the Landlord and Tenant Act, 1954, said in answering Mr. Widgery's criticism of the judgment, at p. 49:-

> " I think that the Judge was entitled to look at the totality of what is proposed to be done and, as a matter of fact and common sense, to ask himself the question whether these proposals involve the demolition or reconstruction of a substantial part of the premises, or the carrying out of substantial work of construction on them. The case may perhaps be near the line; though I am not for myself saying that it is. But if it is near the line, then I think that there

was here evidence to justify the conclusion of fact which the Judge expressed in the paragraph already quoted. I would add that I do not, for my part, accept the view that paragraph (f) is exclusively applicable to the kind of demolition, construction or reconstruction which is appropriate to turning to modern uses an old or out-of-date building. The paragraph does not say so; and we must construe the paragraph according to its terms."

In *Andreas Yerasimou* v. *Andreas Rousoudhiou*, (1974) 1 C.L.R. 107, in delivering the judgment of the Court, we said at pp. 112-113:-

" The question whether the business premises are reasonably required by the landlord is one entirely of fact for the trial Judge. Cf. *Chandrel* v. *Strevett*, L [1947] 1 All E.R. 164 per Bucknill L.J., at p. 167. There is no doubt that the case of the respondent all along before the trial Judge was that the business premises in question were reasonably required by him for the demolition and reconstruction of same, and that the landlord had followed the wording of paragraph (h) of s. 10(1) of Law 17/61, both in paragraph 3 of his pleading and the letter of July 11, 1972, addressed to the tenant.

Now, looking at the terms of s. 10(1)(h), we are of the view that if any one of those grounds are established, the landlord's application for recovery of possession must succeed if the Court is satisfied that the landlord where necessary obtained the necessary permit, because each ground is entirely separate and independent and which if proved entitles the landlord to succeed. If authority is needed, we think we can derive sufficient guidance from the case of *Fisher* v. *Taylors Furnishing Stores Ltd.* [1956] 2 All E.R. 78, where Parker L.J., at p. 84 after dealing with the Landlord and Tenant Act, 1954, read paragraph (f) which is

'That on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that he could not re-

asonably do so without obtaining possession of the holding'."

His Lordship went on:

" From the scheme of the Act as there laid down I should have thought that it was clear, apart from authority, that, if any of those grounds of objection is established, the tenant's application for a new lease must fail. Each ground is entirely separate and independent, and each, if proved, entitles the landlord to succeed."

Finally, we said at p. 114:-

" In the light of these judicial pronouncements, we have reached the view that the learned trial Judge misdirected himself in granting an order of ejectment against the appellant because it is clear from the facts found by him that the landlord required the business premises in question for the demolition and reconstruction of same and once the latter has failed to obtain also the necessary permit for reconstruction of the premises, the learned Judge was wrongly satisfied or made up his mind that the landlord brought himself within the provisions of s. 10(1)(h) of our law. We would, therefore, reverse the judgment of the trial Judge, and allow the appeal on this short question of construction, with costs in favour of the appellant."

In *Anastassia S. Kontou* v. *Antonis Solomou*, (1978) 1 C.L.R. 425, the appellant applied for an order of recovery of possession of a dwelling house of hers on the ground that it was reasonably required by her for substantial alterations and reconstruction under s. 16(1)(h) of the Rent Control Law, 1975.

On appeal against the dismissal of the application, counsel for the appellant contended that the trial Judge misdirected himself as regards the correct application of the said section in that he took the view that the landlord had to show "a genuine present need for the premises and not to be moved by considerations of preference and convenience only", and that the notion of "reasonable requirement" in the said section connotes "something more than desire although at the same time something less than absolute necessity will do".

The learned President, in allowing the appeal and ordering a re-trial by another Judge said at p. 428:-

" A corresponding, but not identical and not fully analogous, provision in England is section 30(1)(f) of the Landlord and Tenant Act, 1954; and case-law in relation to the construction of that provision, such as *Fisher* v. *Taylors Furnishing Stores, Ltd.*, [1956] 2 All E.R. 78, *Fernandez* v. *Walding*, [1968] 1 All E.R. 994 and *Heath* v. *Drown*, [1972] 2 All E.R. 561, shows that the notion of 'reasonable requirement' in a case of a claim for possession for the purpose of substantial alterations or reconstruction is linked only to whether or not it is reasonable for the landlord to obtain possession for that purpose having regard to the nature and extent of the proposed alterations or reconstruction, and that it is unrelated to factors such as those mentioned in the above quoted passages from the judgment of the trial Judge.

Moreover, we do agree with counsel for the appellant that if the trial Judge had been convinced that the requirements laid down in section 16(1)(h) of Law 36/75 were satisfied then there was no room for the exercise of any discretion on his part in relation to the making of an order for possession; nor, as the Fisher case, *supra*, shows, could he have refused to make an order for possession merely because the appellant proposes to occupy the reconstructed premises herself.

We have, therefore, to hold that the trial Judge misdirected himself in law when applying the relevant legislative provision to the claim of the appellant".

In the light of these judicial pronouncements, we have reached the view that the learned trial Judge rightly and correctly followed the case of *Bewlay* (*supra*), as well as the two Cyprus cases. In our opinion, the trial Judge has not misdirected himself because from the evidence adduced, and which he accepted, it was clear that the landlord reasonably required the shop in question and that the proposed works to be carried out were of a substantial alteration affecting the premises; and the landlord could not reasonably do so without obtaining possession of the shop in question. From the scheme of the Act, as there laid down, we think that it was clear, apart from authority, that once any one of these grounds was established, the landlord could succeed.

The trial Judge held that the work did fall within the language of paragraph (h) of section 16(1) of Law 36/75, and whether the work proposed is or involves alteration or reconstruction of a substantial part of the premises, we would reiterate, is prima facie a question of degree and fact, and therefore, in the present case, in the absence of misdirection or evidence contrary to the conclusion reached, we repeat, we will not interfere.

Having answered the arguments of counsel for the appellant, and once there was clearly evidence to support a conclusion in favour of the respondent landlord, this appeal must be dismissed accordingly.

Appeal dismissed. No order as to costs once costs were not claimed by the appellant in this appeal.

Appeal dismissed. No order as to costs.