

1979 October 15

[MALACHTOS, DEMETRIADES, SAVVIDES, JJ.]

ELENI THEMISTOCLEOUS,

*Appellant,*

v.

DEMETRA STEPHANIDOU,

*Respondent.*

(Civil Appeal No. 6000).

*Statutes—Construction—“His spouse” in section 16(1)(g) of the Rent Control Law, 1975 (Law 36/75) includes “her spouse”—Section 2 of the Interpretation Law, Cap. 1.*

- 5 *Landlord and tenant—Statutory tenancy—Recovery of possession—Premises reasonably required by husband of the landlady—Section 16(1)(g) of the Rent Control Law, 1975 (Law 36/75)—“Hardship” in the said section 16(1)(g)—Discretion of trial Judge—All personal circumstances of parties taken into consideration by trial Judge in exercising his discretion in favour of landlord—Tenant failed to persuade Court of Appeal that such discretion was wrongly exercised or was not warranted by the evidence before the trial Judge—Failure of tenant to seek alternative accommodation—Rightly taken into account in considering the “circumstances of the case” under the said section 16(1)(g) of the Law.*
- 10
- 15 *Rent Control Law, 1975 (Law 36/75)—“His spouse” in section 16(1)(g) of the Law—Includes “her spouse”—Section 2 of the Interpretation Law, Cap. 1.*

20 The respondent was the owner of a block of four shops one of which was occupied by the appellant as a statutory tenant. Her husband, who was the Manager and biggest shareholder of a trading company, sustained extensive losses because of the Turkish invasion and the business of his company was considerably affected. As a result he decided to start a personal business of his own and set up such business in the shops owned

25 by his wife—the respondent—by joining all of them and converting them into one spacy big shop and shawroom. When three

of the shops were vacated the respondent did not let them but kept them vacant to be used by her husband. By letter dated 17th December, 1977, the respondent gave notice to the appellant to vacate the premises till the 20th January, 1978 and informed her that the said shop was reasonably required by her husband for his business. The appellant failed to vacate the premises and the trial Court, on the application of the respondent, made an order for recovery of possession under section 16(1)(g)\* of the Rent Control Law, 1975 (Law 36/75). The tenant occupied the said shop as a statutory tenant and used it for selling sporting goods. She has left Cyprus since February, 1975 and has settled with her husband in Greece; both of them secured employment there and the business in the shop was run through an employee with a small profit made out of such business. Since the time she left Cyprus, she visited Cyprus only once.

The trial Judge found\*\* that the landlady has discharged the onus of proof that she reasonably required the premises in question for occupation by her husband and that the tenant failed to discharge her burden of proving greater hardship to her if an order for possession was made.

Upon appeal counsel for the tenant contended:

- (a) That the owner was not entitled to an order under section 16(1)(g) of Law 36/75, as the provisions of such section did not extend to, or render any protection to, the "husband" of the owner, in view of the wording of such section which provided for cases where the premises were reasonably required by "the landlord, his spouse ...", but made no mention of the "husband".
- (b) That the trial Court was wrong in finding that the premises were reasonably required by the husband of the owner.
- (c) That the trial Court was wrong in finding that the tenant failed to seek alternative accommodation.

*Held*, (i) that section 2 of the Interpretation Law, Cap. 1 makes clear provision as to inclusion of females in the definition

\* Quoted at pp. 536-7 *post*.

\*\* See the relevant part of the judgment at pp. 538-9 *post*.

of males; that it is clear from the whole object and wording of the law that the protection was intended both for the wife or the husband of the owner, depending as to whether the owner was male or female; and that, accordingly, contention (a) must fail.

(2) That there was ample evidence on which the trial Judge could base his findings that the premises were reasonably required by the husband of the owner and that the finding of the trial Judge in this respect was the correct one; that the trial Judge, on the evidence before him, arrived at the correct conclusion in finding that the appellant failed to satisfy the Court that greater hardship will be suffered by her if an eviction order was made; that all personal circumstances of the parties were taken into consideration by the trial Judge, who exercised his discretion in favour of the owner, and the appellant failed to persuade this Court that the discretion of the trial Judge was wrongly exercised or was not warranted by the evidence before him; and that, accordingly, contention (b) must fail.

(3) That the trial Judge was correct in finding that the tenant failed to seek alternative accommodation for her business and he very rightly took into account this factor in considering the "circumstances of the case" under section 16(1)(g) of the Law; and that, accordingly, contention (c) must, also, fail.

*Appeal dismissed.*

25 Cases referred to:

*Beresford-Hope v. Lady Sandhurst* [1889] 23 Q.B.D. 79;

*Nairn v. St. Andrew's University* [1909] A.C. 147;

*Bebb v. Law Society* [1914] 1 Ch. 286.

### Appeal.

30 Appeal by the tenant against the judgment of the District Court of Nicosia (HjiConstantinou, S.D.J.) dated the 25th August, 1979 (Rent. Appl. No. 289/78) whereby she was ordered to deliver vacant possession of a shop at Gregoris Afxentiou Str. No. 6 Nicosia.

35 A. Pandelides, for the appellant.

D. Koutras, for the respondent.

*Cur. adv. vult.*

MALACHTOS J.: The judgment of the Court will be delivered by Mr. Justice Savvides.

SAVVIDES J.: This is an appeal against an order of the District Court of Nicosia whereby the appellant was ordered to deliver vacant possession of a shop at Gregoris Afxentiou Street, No. 6, Nicosia, with stay of execution till the 15th of October, 1979. The order was made on the application of the owner under the provisions of the Rent Control Law (Law No. 36/75) and in particular, section 16(1)(g) which provides as follows:

“16.—(1) Ουδεμία απόφασις καὶ οὐδὲν διάταγμα ἐκδίδεται διὰ τὴν ἀνάκτησιν τῆς κατοχῆς οἰασδήποτε κατοικίας ἢ καταστήματος, διὰ τὸ ὅποῖον ἰσχύει ὁ παρῶν Νόμος, ἢ διὰ τὴν ἐκ τούτου ἔξωσιν ἐνοικιαστοῦ, πλὴν τῶν ἀκολουθῶν περιπτώσεων:

(ζ) εἰς περίπτωσιν καθ’ ἣν ἡ κατοικία ἢ τὸ κατάστημα ἀπαιτεῖται λογικῶς πρὸς κατοχὴν ὑπὸ τοῦ ἰδιοκτῆτου, τῆς συζύγου του, τοῦ υἱοῦ του, τῆς θυγατρὸς του, τοῦ γαμβροῦ του, τῆς νύμφης του, τοῦ ἀδελφοῦ του ἢ τῆς ἀδελφῆς του, οἵτινες εἶναι ἡλικίας ἄνω τῶν δεκαοκτῶ ἐτῶν καὶ εἰς οἰανδήποτε τῶν περιπτώσεων τούτων τὸ Δικαστήριον θεωρεῖ λογικὴν τὴν ἐκδοσιν τοιαύτης ἀποφάσεως ἢ τοιοῦτου διατάγματος:

Νοεῖται ὅτι οὐδεμία ἀπόφασις καὶ οὐδὲν διάταγμα θὰ ἐκδίδωνται δυνάμει τῆς παραγράφου αὐτῆς, ἐὰν ὁ ἐνοικιαστὴς πείσῃ τὸ Δικαστήριον ὅτι, λαμβανομένων ὑπ’ ὄψιν ὅλων τῶν περιστάσεων τῆς ὑποθέσεως, θὰ ἐπροξενεῖτο μεγαλύτερα ταλαιπωρία διὰ τῆς ἐκδόσεως τοῦ διατάγματος ἢ τῆς ἀποφάσεως παρὰ διὰ τῆς ἀρνήσεως ἐκδόσεως τούτου.

Διὰ τοὺς σκοποὺς τῆς παραγράφου αὐτῆς ὁ ὅρος ‘περιστάσεις τῆς ὑποθέσεως’ περιλαμβάνει τὸ ζήτημα κατὰ πόσον ὑπάρχει διαθέσιμον ἕτερον μέρος στεγάσεως διὰ τὸν ἰδιοκτῆτην ἢ τὸν ἐνοικιαστὴν, καὶ τὸ ζήτημα κατὰ πόσον ὁ ἰδιοκτῆτης ἠγόρασε τὸ ἀκίνητον μετὰ τὴν ἡμερομηνίαν καθ’ ἣν ἐτέθη ἐν ἰσχύϊ ὁ παρῶν Νόμος πρὸς τὸν σκοπὸν ἀποκτήσεως κατοχῆς δυνάμει τῶν διατάξεων τῆς παρούσης παραγράφου.

“ 16.—(1) No judgment or order for the recovery of posses-

sion of any dwelling house or business premises to which this Law applies, or for the ejection of a tenant therefrom, shall be given or made except in the following cases:

.....

- 5 (g) Where the dwelling house or business premises are reasonably required for occupation by the landlord, his spouse, his son, daughter, son-in-law, daughter-in-law, brother or sister, who are over eighteen years of age, and in either case the Court considers it reasonable
- 10 to give such judgment or make such order:

Provided that no judgment or order shall be given or made under this paragraph if the tenant satisfies the Court that, having regard to all the circumstances of the case, greater hardship would be caused by

15 granting the order or judgment than by refusing to grant the same.

For the purposes of this paragraph, the expression 'circumstances of the case' shall include the question whether accommodation is available for the landlord or the tenant, and the question whether the landlord

20 purchased the premises after the date of the coming into operation of this Law for the purpose of gaining possession under the provisions of this paragraph;

....." ).

The respondent is the owner of a block of four shops at

25 Gregoris Afxentiou Street, one of which is occupied by the appellant as a statutory tenant. Respondent's husband is the Manager and biggest shareholder of a trading company which, as a result of the Turkish invasion, sustained extensive losses and was declared as a stricken company, and in consequence,

30 the Income Tax Authorities accepted, for purposes of income tax, a loss of £200,000. Due to the extensive losses sustained by the company the Bank credit limits to the company were restricted and the business of the company considerably affected. As a result, respondent's husband for making his living and that

35 of his family, decided to start a personal business of his own by importing and selling electrical appliances and other goods, and set up such business in the shops owned by his wife by joining all of them and converting them into one spacy big

shop and showroom to accommodate his business. Such shops were adjacent with their house which belonged to his wife and they provided ample parking space required for his business. The said shops were the only suitable ones for his business and for this reason, when the three of them were vacated by the tenants, the last two in 1976 and 1978, his wife did not let them but kept them vacant to be used by her husband. 5

By a letter dated 17th December, 1977, the respondent gave notice to the appellant to vacate the premises till 20.1.1978 and informed her that the said shop was reasonably required by her husband for his business. 10

The appellant, tenant, occupied the said shop as a statutory tenant and used it for selling sporting goods. Since February, 1975, appellant left Cyprus and has settled with her husband in Greece; both of them secured employment there and, according to the evidence, the business in the shop is run through an employee with a small profit made out of such business. Since the time they left Cyprus, the appellant visited Cyprus only once and that was the only occasion when she visited her shop as well. 15 20

The trial Judge in dealing with the questions as to whether the premises were reasonably required by the owner and as to whether greater hardship will be suffered by the tenant if an eviction order is made, concluded as follows:

“ Consequently, I find that the landlord has discharged the onus of proof and has convinced me that she reasonably requires the shop in question for occupation by her husband in order to start and establish therein a new business as aforesaid. 25

.....  
I can neither see that the tenant will suffer any serious financial loss or other serious inconvenience if the order for possession sought is granted. On the contrary if an order for possession is not made the landlord's husband will be precluded from starting and establishing the new intended business and will be deprived from the expected earnings therefrom. The landlord has already suffered loss of rents in respect of the two shops kept vacant for a considerable time. In any case the tenant failed to 30 35

discharge her burden of proving greater hardship to her if an order for possession is made. On the contrary, the evidence shows that greater hardship would be caused to the landlord if I refused to make the order sought."

5 Counsel for appellant argued before us that the owner was not entitled to an order under section 16(1)(g) of the Law, as the provisions of such section did not extend to, or render any protection to, the "husband" of the owner, in view of the wording of such section. Counsel submitted that the section  
10 provided for cases where the premises were reasonably required by "the landlord", his spouse ....", but nothing was mentioned about "husband". He agreed that the word "landlord" may be interpreted as including both male or female owner, but the words "his spouse" could not be interpreted as including "her  
15 spouse".

Under the Interpretation Law, Cap. 1, section 2, provision is made as follows:

20 " In this Law and in every other Law, and in all public instruments, enacted, made, issued, kept or in use, before or after the commencement of this Law, the following words and expressions shall have the meaning hereby assigned to them respectively, unless there is something in the subject or context inconsistent with such construction or unless it is therein otherwise expressly provided—

25 .....  
words importing the masculine gender include females;  
....."

Such provision is in similar wording as the English Interpretation Act, 1889, section 1(1)(a) Halsbury's Statutes of England, Third Ed. Vol. 32, page 434 at p. 435. The following cases are referred to in the footnote of Halsbury's Statutes of England  
30 at p. 435, as instances of "contrary intention", as found by the Court in construing this provision: *Beresford-Hope v. Lady Sandhurst* [1889] 23 Q.B.D. 79 (woman held to be incapable of election as a county councillor); *Nairn v. St. Andrew's University*, [1909] A.C. 147 (woman held to have no vote for parliamentary candidate); *Bebb v. Law Society*, [1914] 1 Ch. 286 (woman  
35 held ineligible to be a solicitor).

We find this ground of appeal as unfounded. The Inter-

pretation Law makes clear provision as to inclusion of females in the definition of males. If we accept the construction suggested by counsel for the appellant that the word "landlord" may be applicable to both males and females then by finding that the word "his" accompanying the word "spouse" does not include "her", such construction will lead to absurdity. It is clear from the whole object and wording of the Law that the protection was intended both for the wife or the husband of the owner, depending as to whether the owner was male or female.

Coming now to the other ground of appeal that the trial Court was wrong in finding that the premises were reasonably required by the husband of the owner, we find that there was ample evidence on which the Court based its findings and we are satisfied that the finding of the trial Judge in this respect, is the correct one.

As to the question of hardship which under the proviso to section 16(1)(g) the Court had to consider before making an eviction order, we are satisfied that the trial Judge on the evidence before him, arrived at the correct conclusion in finding that the appellant failed to satisfy the Court that greater hardship will be suffered by her if an eviction order is made. In dealing with the question of hardship the fact that the appellant and her husband have settled for the last five years in Athens and they are both working there, whereas the business in Cyprus is carried out by an employee without their taking any active part in its running and with a small profit, was a material fact which was properly taken into consideration by the Court. The appellant did not give evidence before the Court to manifest any intention to return to Cyprus and it was in this respect that the Court found that there was no intention shown by the appellant to return to Cyprus and carry on the business in the said shop as her main occupation. All personal circumstances of the parties were taken into consideration by the trial Judge who exercised his discretion in favour of the owner and we must say that the appellant failed to persuade us that the discretion of the trial Judge was wrongly exercised or is not warranted by the evidence before him. We must further say that the trial Judge was correct in finding that the tenant failed to seek alternative accommodation for her business after the owner had requested her to deliver vacant possession of the premises



and, therefore, the ground of appeal on this issue also fails. Very rightly, in our view, the trial Judge took into account this factor in considering the "circumstances of the case" under section 16(1)(g) of the Law.

5 In the result, the appeal fails and is hereby dismissed with costs.

Taking into consideration, however, the fact that the eviction order expires today, in the exercise of the powers vested in us, we extend the stay of execution till the 30th November, 1979.

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*Appeal dismissed with costs. Stay of execution until November 30, 1979.*