

1981 March 12

[L. LOIZOU, HADJIANASTASSIOU AND DEMETRIADES, JJ.]

COSTAS I. KOKKALOS,

Appellant.

v.

IOANNA K. PAVLIDOU AND OTHERS,

Respondents.

(Civil Appeal No. 6187).

*Landlord and tenant—Statutory tenancy—Recovery of possession
—Premises let at monthly rent of £180—Part thereof sub-let at
£225— Unreasonable profit having regard to the rent paid by tenant
—Order of ejectment—Section 16(1)(f) of the Rent Control Law,
1975 (Law 36/75).*

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By virtue of a contract of lease dated 17th January, 1970 the appellant leased from the respondents certain premises at Nicosia for a period of 10 years at a monthly rent of £180 per month. In about June, 1980, the appellant sub-let about half of the premises to a sub-tenant for a period of two years for the rent of £225.—per month. In proceedings by the respondents for an ejectment order on the ground* that by sub-letting part of the premises, the appellant was making a profit which, having regard to the rent paid by him, was unreasonable, the trial Judge came to the conclusion that the profit appellant was making was quite unreasonable having regard to the rent he

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* This ground was based on section 16(1)(f) of the Rent Control Law, 1975 which reads as follows:

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

.....
(f) where the tenant, by taking in lodgers or by sub-letting or otherwise parting with the possession of the whole or any part of the dwelling house or business premises, is making a profit, whether directly or indirectly, which, having regard to the rent paid by the tenant, is unreasonable and the Court considers it reasonable to give such judgment or make such order”.

was paying to the respondents and that in the circumstances he considered it quite reasonable to make an order of ejection.

Upon appeal by the tenant:

Held, that this Court has not been satisfied that the judgment of the trial Court is in any way wrong or that this is a case in which it could interfere; accordingly the appeal must be dismissed. 5

Appeal dismissed.

Appeal.

Appeal by the tenant against the judgment of the District Court of Nicosia (Artemides, S.D.J.) dated the 27th October, 1980 (Appl. No. 328/80) whereby an ejection order was made against him in relation to premises situated at the corner of Diagoras and Christodoulos Sozos Streets in Nicosia. 10

A. Eftychiou, for the appellant. 15

X. Clerides, for the respondents.

L. LOIZOU J. gave the following judgment of the Court. This is an appeal by the tenant against the judgment of the District Court of Nicosia whereby an ejection order was made against him in relation to premises situated at the corner of Diagoras and Christodoulos Sozos streets in Nicosia. 20

The appellant leased the premises in question from the owners—the respondents in this appeal—by virtue of a contract of lease dated 17th January, 1970, for a period of ten years commencing on the 1st March, 1970 and ending on the 28th February, 1980. The rent was fixed at £180.—per month, payable in advance. This contract of lease is exhibit 1 in these proceedings. 25

It is common ground that the tenant—the appellant—is in occupation as a statutory tenant. 30

The application to the District Court was based on two grounds: (a) that the respondent had contravened a basic term of the tenancy agreement, and (b) that by sub-letting part of the subject-matter property, he was making a profit which, having regard to the rent paid by him, was unreasonable. The first ground was based on para. (b) of sub-section 1 of section 35

16 of the Rent Control Law 36/75 and the second on para. (f) of sub-section 1 of the same section.

We need not concern ourselves with the first ground in the application which, in effect, took most of the time of the trial Court, because this ground was resolved in favour of the appellant.

The order for ejectment was made on the second ground.

Para. (f) of section 16(1) of the Rent Control Law reads as follows:-

10 “16(1)- No judgment or order for the recovery of possession of any dwelling house or business premises to which this Law applies, or for the ejectment of a tenant therefrom, shall be given or made except in the following cases:-

15 (f) where the tenant, by taking in lodgers or by sub-letting or otherwise parting with the possession of the whole or any part of the dwelling house or business premises, is making a profit, whether directly or indirectly, which, having regard to the rent paid by the
20 tenant, is unreasonable and the Court considers it reasonable to give such judgment or make such order”.

In about June, 1980, the appellant sub-let about half of the premises, which incidentally consist of a spacious shop, or perhaps just a little more than half, to a subtenant for a period
25 of two years for the rent of £225.- per month. That much was admitted by the appellant himself at the hearing, although the allegation of the other side was that the rent of the sub-tenancy was £325.- per month. But be that as it may, the learned trial Judge took it that it was £225.-.

30 The trial Judge came to the conclusion that the profit of the appellant for sub-letting part of the premises was, having regard to the rent paid by him for the whole premises, unreasonable, and, with regard to the second question as to whether it would be reasonable to make an ejectment order, he again
35 decided that it would be reasonable.

The appeal is based on several grounds. It was argued

before us today by learned counsel for the appellant in support of his appeal, that the findings of the trial Court were wrong because the appellant had a right to sub-let in accordance with the terms of his contract, that he was not making an unreasonable profit because the part of the shop which he had sub-let was the best part of the premises, and, also, that the trial Judge did not take into consideration that the appellant had to pay himself for the electricity and the water. 5

Learned counsel for the appellant also reminded us, in arguing this part of his appeal, that the tenant, that is to say the appellant, was not in possession of the premises from July to September in each year, which we might add, seems to support the reasoning of the trial Judge why he considered that it was reasonable to make the order. 10

In his elaborate judgment the trial Judge says that the criteria under our law in a case of this nature are, firstly, whether the tenant is making a profit which, having regard to the rent which he paid to the landlord, is unreasonable, and, secondly, whether it would be reasonable to make the order for ejection assuming that the first criterion is satisfied and answered in the affirmative. 15 20

In dealing with the first criterion the trial Judge had this to say:

“The respondent pays a rent of £180.- and he receives one of £225.-. He is thus making a profit of £45.- per month. In addition however to this profit he still occupies premises for his business comprising nearly half the area of the shop which has been divided in two. Although he pays for 10 years a rent of £180.- per month he is not only making a profit of £45.- by renting half of this room, but he is also carrying on in the other part his own business. I would definitely, in these circumstances, come to the conclusion that the profit he is making is quite unreasonable having regard to the rent he pays to the applicants”. 25 30

When dealing with the second criterion, the judge said this in his judgment:- 35

“The respondent has been in possession of this shop for 10 years, always at the rent of £180.- per month. This is not the first time that he sub-leases the premises. He

himself has admitted that previously to the present sub-tenant he had sub-let it to various persons, five or six, who stayed for a few months and then left the shop.

5 I am of the firm opinion that the respondent does not, in fact need this shop for his own business only but for making in addition a profit by sub-letting part of it. In these circumstances, I consider it quite reasonable to make an order of ejection against him”

10 Having heard learned counsel for the appellant today, we have not been satisfied that the judgment of the trial Court is in any way wrong or that this is a case in which we could interfere.

The appeal is, therefore, dismissed with costs.

15 With the consent of counsel for the respondents, we order that the stay of execution be extended until the 30th April, 1981.

Appeal dismissed with costs.