

1987 March 16

(A LOIZOU DEMETRIADES KOURRIS JJ)

COSTAS XENOFONTOS

Appellant-Respondent,

v

KH PAPASIAN LTD

Respondents-Applicants,

(Civil Appeal No 7213),

Rent Control – Business premises – Eviction of tenant from – Section 11(1)(h) of the Rent Control Law 23/83 – «Abuse of right» – A requirement applicable only to the instance in sub-paragraph (i) of the section -- Not applicable to the instances in sub-paragraphs (ii) and (iii) thereof – The new requirement that “the landlord could not reasonably do what are in sub paragraphs (i)(ii) and (iii) set out, without obtaining possession of the premises” – Aim of legislator in enacting such new requirement – The requirement as to the «necessary permit» – Satisfied, if it exists on date of hearing – Not necessary that it should exist on the date the reserved judgment is delivered

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The appellant was ordered by the Rent Control Court to deliver free and vacant possession of the business premises situated in Ledra Str . No 102-104 in Nicosia, on the ground that they were reasonably required by the respondents for demolition and reconstruction of a new building (section 11 (1) (h) of the Rent Control Law 23/83)

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The grounds of appeal are That the proposed demolition constitutes an “abuse of right”, that the trial Judge misdirected himself on the law as he relied on the principle in *Kontou v Solomou* (1978) 1 C L R 425, dealing with the interpretation of section 16(1) (h) of the Rent Control Law 36/75, and that the validity of the relevant demolition and building permits expired after the conclusion of the hearing, but before delivery of the reserved judgment of the trial Court

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Held, dismissing the appeal (1) The term “abuse of right” is contained only in sub-paragraph (i) of section 11(1) (h) in relation to the instance of “demolition”, and not in sub-paragraphs (ii) and (iii) thereof in relation respectively to the instance of “demolition and reconstruction of new premises” and to the instance of “substantial and radical alterations” The very fact that the legislator separated the three instances into separate sub-paragraphs and introduced the element of “abuse of right” only in respect of the first one, shows that this requirement is confined to cases where the premises are sought solely for the purpose of demolition

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(2) Section 11(1) (h) of Law 23/83 added the requirement that in addition to the other pre requisites the landlord could not reasonably do what are in sub paragraphs (i) (ii) and (iii) set out without obtaining possession of the premises” The aim of the legislator is to prevent the automatic granting of eviction orders where the other pre requisites are proved to exist This provision did not exist in section 16(1) (h) of Law 36/75 but reference to *Kontou* case *supra* is not a misdirection as what was decided therein is still applicable to the first requirement of the section namely that the “premises are reasonably required by the landlord” for the purposes set out in its three sub paragraphs The trial Judge did not refer to *Kontou* case in respect of the said new requirement The trial Judge posed the question whether the landlord could reasonably demolish and reconstruct the premises without obtaining possession of the premises and concluded rightly in the circumstances that it is not possible to construct a basement groundfloor and three stores on the plot under examination of which the subject premises are part without the tenant moving away

(3) The requirement as to the necessary permit is satisfied if along with the other requirements exists on the date the case is heard and not on the date a reserved judgment is delivered

Appeal dismissed
No order as to costs

Cases referred to

Kontou v Solomou (1978) 1 C L R 425

Michaelides v Iacovides (1979) 1 C L R 123

Yerassimou v Roussounidou (1974) 1 C L R 107

Whittingham v Davies and Another [1962] 1 All E R 195

Ali v Shenit XX [Part II] C L R 68

Appeal.

Appeal by respondent against the judgment of the Rent Control Court of Nicosia dated the 22nd April 1986 (Appl No E208/84) whereby he was ordered to deliver free and vacant possession of the business premises in Ledra Street No 102 104, Nicosia on the ground that they were reasonably required by the applicants for demolition and reconstruction of a new building

Ph. Clerides, for the appellant.

C. Emilianides, for the respondents.

Cur adv. vult.

A. LOIZOU J. read the following judgment of the Court. This is an appeal from the judgment of the Rent Control Court, Nicosia, by which the appellant was ordered to deliver free and vacant possession of the business premises situated in Ledra Street No. 102-104, Nicosia, on the ground that they were reasonably required by the respondents for demolition and the reconstruction of a new building. The execution of the said Order given on the 22nd April 1986 was suspended until the 31st January 1987. The appellant was further ordered to pay £65.- mesne profits until delivery of the vacant possession of the said premises and the respondents to pay by way of compensation to the appellant, eighteen months rent, i.e. £1,170. - upon delivery of the vacant possession of the said premises. Finally in the exercise of the Court's discretion under the Rent Control Rules of Court of 1983, there was made no order as to costs.

The facts of the case are briefly these. The respondents acquired the ownership of the subject premises in 1981. On the 20th March, 1984, a four months written notice was given to the tenant under the provisions of section 11(1) (h) of the Rent Control Law, 1983 (Law No. 23 of 1983) hereinafter to be referred to as the Law.

The proposed demolition, of the subject premises as well as the two other adjacent shops and an archade and an area of more than double the area of the shops at the back of the premises, is for the purpose of reconstructing a multishop as it was described, consisting of a basement, parking-place, ground, first, second and third floors.

The application was filed on the 10th August 1984, and on the 20th March, 1984, the respondents produced to the Court the demolition permit issued by the Municipality of Nicosia under No. 237 and a building permit under No. 15271, as well as a receipt for the collection by the Municipality of £1,360. - demolition fees and fees for the building permit. The whole project will cost £300,000.-

which the respondents being a flourishing business are in a position to spend.

5 In 1984 the digging, of the open space at the back, for the construction of the basement started and the work stopped after spending £25,000 awaiting the judgment of the trial Court, regarding the premises occupied by the appellant and two other tenants. They further spent another £25,000.- by placing an order for the supply of a glass-dome which will be installed on the top of the building for lighting

10 The appellant who is also occupying a shop opposite, is a tenant of the said premises since 1965 when it was built. He had been a tenant of the older shop that was then demolished and rebuilt in 1964 and since 1979 he pays the monthly rent of £65.-.

15 An order for the recovery of possession was given in the meantime against the two other tenants whilst this case proceeded for hearing. The learned President duly dealt in his judgment with the evidence and elaborated in particular on matters relating to the plans, demolition and building permits and the intended use of this multi-storeyed shopping centre. He then set down the five
20 prerequisites to which reference will be made later, which in his view are required to be satisfied under section 11(1) (i) (ii) (iii) and proceeded to examine same.

Section 11(1) (h) of the Law reads as follows:

25 11(1) Ουδεμία απόφασις και ουδέν διάταγμα εκδίδεται δια την ανάκτησιν της κατοχής οιασδήποτε κατοικίας ή καταστήματος, δια το οποίον ισχύει ο παρών Νόμος, ή δια την εκ τούτου έξωσιν θεσμίου ενοικιαστού, πλην των ακολούθων περιπτώσεων:

30 (η) εις περίπτωσιν καθ' ην το ακίνητο απαιτείται λογικώς υπό του ιδιοκτήτου -

(i) δια την κατεδάφισιν τούτου οσάκις αύτη δεν συνιστά κατάχρησιν δικαιώματος,

(ii) δια την κατεδάφισιν και επανοικοδόμησιν νέου ακινήτου, ή

(iii) δι' ουσιαστικής και ριζικής αλλαγής συνεπαγομένης την ριζικήν και ολικήν μετατροπήν τούτου δια σκοπούς αξιοποιήσεώς του, και το Δικαστήριο είναι πεπεισμένον ότι ο ιδιοκτήτης εξησφάλισε δια τα ανωτέρω οσάκις ήτο επάναγκες την αναγκαίαν προς τούτο άδειαν και ότι ο ιδιοκτήτης δεν δύναται λογικώς να προβή εις τα εν ταις υποπαραγράφοις (i), (ii), (iii) διαλαμβανόμενα άνευ ανακτήσεως της κατοχής του ακινήτου και νοουμένου ότι παρέσχεν ουχί βραχυτέραν των τεσσάρων μηνών έγγραφον προειδοποίησιν εις τον ενοικιαστήν να εκκενώση το ακίνητον.»

In English

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

(h) Where the premises are reasonably required by the landlord -

(i) for demolition thereof whenever this does not amount to an abuse of right,

(ii) for the demolition and reconstruction of new premises, or

(iii) for substantial and radical alterations entailing their radical and total conversion for the purpose of their development,

and the Court is satisfied that the landlord has, where necessary, obtained for the aforesaid the necessary permit and that the landlord could not reasonably do what are in subparagraphs (i) (ii) and (iii) set out, without obtaining possession of the premises and provided that he has given to the tenant not less than four months notice in writing to vacate the premises.”

The first ground of appeal argued before us is that the proposed demolition of the said premises constitutes an abuse of right in that it intended to serve another purpose than the bona fide development of the property in question or the demolition of same because it is necessary as being dangerous and ready to

collapse. Learned counsel went deeply into the legal meaning of abuse of right and referred us to numerous authorities, both in relation to ejection orders and to rights safeguarded by various constitutions.

- 5 The first question, however, for determination by us is whether the term abuse of right which is contained in subparagraph (i) of the said section and in relation to the instance of demolition alone, as provided in subparagraph (i) and not to the two other instances under subparagraphs (ii) and (iii) thereof that is "the demolition
10 and reconstruction of new premises" on the one hand, or "for substantial and radical alterations ... for the purpose of their development".

- In our view the very fact that the legislator separated the three instances into separate subparagraphs and introduced the
15 element of "abuse of right" only in respect of the first one, shows that this requirement was confined only to the cases where premises are sought solely for the purpose of demolition under subparagraph (i) and not to all the instances in the said section. This ground therefore fails.

- 20 The second ground of appeal which was argued in connection with the first, but yet it constitutes, as we understood it a separate one, is that the learned trial Judge misdirected himself on the law as he relied on the principles of the case of *Kontou v. Solomou* (1978) 1-C.L.R. 425, which interpreted section 16. (1) (h) of the
25 Rent Control Law, 1975 (Law No. 36 of 1975) whereas our present section is differently worded.

- It is true that under the old section it was necessary as it is in the present one that the premises should be reasonably required by the landlord for the purposes set out therein, whereas in the
30 present section there has been added the requirement that in addition to the other prerequisites "the landlord could not reasonably do what are in subparagraphs (i), (ii) and (iii) set out, without obtaining possession of the premises".

As this latter provision did not exist in the previous section,

naturally it has not been the subject of judicial interpretation, but in our view it presents no difficulty. The aim of the legislator is to prevent the automatic granting of orders for the recovery of possession where the other prerequisites are proved to exist. It casts upon the Courts the duty to consider further whether the extent of the demolition reconstruction or substantial alteration proposed is of such a nature that same could not reasonably be done by the landlord without obtaining possession of the premises. 5

The reference therefore to the case of *Kontou (supra)* could not amount to a misdirection as what was decided therein is still applicable to the first requirement of the said section, namely that the “premises are reasonably required by the landlord” for the purposes set out in its three subparagraphs. 10

The five prerequisites of the Law which the learned trial Judge examined separately and at length, taking into consideration the evidence adduced, the Law and the authorities are the following: 15

- (1) Is the case in hand covered by the Rent Control Law?
- (2) Has the landlord given to the tenant a notice in writing to vacate the premises, not less than four months?
- (3) Is a permit for the demolition and reconstruction necessary and if yes, has the landlord obtained such permit? 20

It was in respect of this requirement that the learned trial Judge referred to the *Kontou case (supra)* and to a number of other cases such as *Michaelides v. Iacovides* (1979) 1 C.L.R. 123 in which reference is made, also to *Yerassimou v. Roussoudiou* (1974) 1 C.L.R. 107, as well as to a number of English cases. 25

The fifth question posed by him was whether the landlord could reasonably demolish and reconstruct the premises without obtaining possession of the premises. It was in respect of this latter provision that he referred to the case of *Whittingham v. Davies and Another* [1962] 1 All E.R. p. 195 to a passage for the construction of a work on the subject premises under the provisions of section 30(1) (f) of the Landlord and Tenant Act 1954, in which he said: 30

“... the language of s. 30(1)(f) is that the landlord ‘could not reasonably do (the work) without obtaining possession. I conceive that must mean could not reasonably do it as a matter 35

of right without obtaining possession.' The section cannot, I think, have contemplated that it might be well and good if the tenant chose to give unspecified facilities lasting for a considerable time."

- 5 It was then that learned trial Judge concluded that "... in the present case matters are still simpler for the applicant, but independently of the above certainly in the circumstances it is not possible to construct a basement, groundfloor and three stories on the plot under examination of which the subject premises are part,
- 10 without the tenant moving away. So I find that this prerequisite of the section exists. Since therefore all the prerequisites of the law are satisfied I have come to the conclusion of granting an order of ejectment and delivery of vacant possession of the subject premises."
- 15 We find that the learned trial Judge in no way misdirected himself of this aspect of the provision of the Law under consideration but on the contrary he rightly found that the demolition and reconstruction of the premises as envisaged in the architectural plans of the landlord and the demolition of the
- 20 building premises obtained by him could not have reasonably been carried out without obtaining possession of the premises. This ground therefore also fails.

- The last ground of appeal is that as it appears from the duration of the validity of the demolition and building permits produced,
- 25 same have expired after the conclusion of the hearing but before the delivery of the reserved judgment of the Court. This requirement of the law that the landlord must have obtained the necessary permit is not satisfied.

- In our view this requirement is satisfied if along with the other
- 30 requirements the permit exists on the date the case is heard and not on the date a reserved judgment is delivered. Support for this proposition can be found in *Murude Mehmet Ali v. Hassan Remzi Shenili*, Volume XX, (Part II) p. 68. Needless to say that the expiration date of a permit cannot be conclusive against the
- 35 landlord as under Section 5 of the Streets and Buildings Regulation Law, Cap. 96, a permit is renewable at any subsequent time if not conflicting with any regulations in force at the time of such renewal upon payment of the fee prescribed in the original

permit. Indeed in this case it was renewed as we were told in the course of the hearing if that could have any bearing, which within it should and could not. This ground therefore fails.

In the result the appeal is dismissed with no order as to costs.

Appeal dismissed. 5
No order as to costs