

1987 January 12

[A LOIZOU, DEMETRIADES, PIKIS, JJ]

SOTIRIS EMFIETZIS,

Appellant - Respondent,

v.

EKATERINI PIPONIDOU,

Respondent - Applicant.

(Case Stated No. 215).

Rent control — The Rent Control Law 23/83 — Section 11(1)(f) — ‘Reasonably required’ — Meaning of.

The respondent is a refugee earning £140 - per month Her husband earns £350. They have two infant children living with them. From the time the respondent had to leave her home because of the Turkish invasion until 1981 she resided at a number of houses which she rented. From 1981 she moved to the block where the flat, the subject-matter, is situated. The flat in which she resides and for which she pays £60. - per month is identical to the subject matter and it is on the floor above it.

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The respondent bought the subject flat, knowing that the same was occupied by the appellant. The appellant refused to heed respondent's request for an increase of rent from £40. - to £50 per month

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On 22.11.83 the respondent received a letter from her landlord asking her to vacate the flat in which she resided, because the landlord wanted to move in there.

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However, no further action was taken by her landlord.

The appellant is, also, a refugee. He lives in the subject flat with his wife. He earns £525 per month. His wife does not work, but she owns 6,000 shares of the Bank of Cyprus. As the appellant refused to vacate the subject flat the respondent instituted proceedings and obtained an eviction order on the ground that the flat was reasonably required by her and her family. Hence the present appeal.

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Held, allowing the appeal. A) Per Demetriades, J., A. Loizou, J. concurring, that, having considered that the respondent lives with her family in a flat that she rents and which is situated above the one occupied by the appellant and is of the same size as that occupied by the appellant; that at the time she

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5 bought it she well knew that the flat was let to the appellant and that he was a protected tenant that the respondent asked the appellant to add £10 per month to the rent he pays to her and that the landlord of the respondent's flat expressed, but did not pursue his demand for her vacating the flat, we find that the flat occupied by the appellant cannot be said in the light of the authorities on the issue that it is reasonably required for occupation by the owner

10 B) Per Pikiis J (1) The first hurdle the owner must overcome in order to make a case for recovery of possession is to establish that the premises are reasonably required for occupation by the owner «Requires» imports a subjective element, namely that the owner genuinely wants to recover possession with a view to occupation of the premises but the element of «reasonableness» changes the inquiry into the needs of the owner into an objective one making it incumbent upon the owner to prove not only that the premises are genuinely required for his or her needs but that the need is objectively justified as well The test is «A genuine present need something more than desire although something less than absolute necessity »

20 (2) The immediacy of the need the owner has of the premises is necessarily dependent on the adequacy of other accommodation for the satisfaction of her needs and those of her family The element of immediacy is lacking whenever the owner or any of the persons for whom recovery can be sought is a statutory tenant, more so in a case like this where the owner purchased the property full well knowing that it was subject to rent control

25 (3) The trial Court approached the question of the reasonableness of the requirement from the wrong angle, namely the financial circumstances of the parties Considerations of comparable hardship only come into play if the owner first establishes that the premises are reasonably required as aforesaid

Appeal allowed
No order as to costs

Cases referred to

- 30 *Stylianides v Paschalidou* (1985) 1 C L R 49,
Antoniadou v Panteli and Another (1979) 1 C L R 57,
Yiannopoulos v Theodoulou (1979) 1 C L R 215,
Kennealy v Dunne [1977] 2 All E R 16,
Aitken v Shaw (1933) S C T (Shenff Court) 21, 22,
- 35 *Cumming v Danson* [1942] 2 All E R 653,
Rhodes v Cornford [1947] 2 All E R 601,
Shreeve v Hallam (1950) W N 140,

Papageorghiou v HadjiPieras (1981) 1 C L R 560,

Duffield v. Gnmshaw (1947) E G 322,

Woodhouse v Gnggs (1947) L J N C C R 138

Case stated.

Case stated by the Chairman of the Rent Control Court of Nicosia relative to his decision of the 27th February, 1985 in proceedings under section 11(1)(f) of the Rent Control Law, 1983 (Law No. 23/83) instituted by Ekaterini Piponidou against Soterios Emfietzis whereby an ejection order was granted against the tenant.

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M. Cleopas, for the appellant.

G. Papatheodorou, for the respondent

Cur. adv. vult.

A. LOIZOU J.: The main judgment of the Court will be delivered by His Honour Judge Demetriades.

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DEMETRIADES J.: After the Rent Control Court heard the application of the respondent in this appeal, by which she was praying for the ejection of her tenant, the appellant, an order was granted for his ejection from the flat he is occupying, on the ground that the flat in question was reasonably required for occupation by the landlord and her family.

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Against that order the tenant filed this appeal.

The facts, as found by the trial Court are, in brief, the following:

The respondent, a refugee from Famagusta, bought the flat, the subject matter of this appeal in May 1983 at the price of £14,000.-, after contracting loans from the Government of the Republic and two Co-operative Credit Societies. The flat was transferred and registered in the name of the respondent on the 17th September, 1983. At the time she purchased the flat, it was rented to the appellant at £40.- per month.

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The respondent is a secondary school teacher employed by a private school. She earns £140.- per month. She has no other income, nor is she the owner of any other immovable property. She got married in 1975 and her husband is a cloth/material merchant, earning approximately £350.- per month. The husband

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is not the registered owner of any immovable property. They have two children, one attending the third class of an elementary school and the other a nursery. From the time the respondent had to leave Famagusta forcibly and until 1981 she resided at a number of houses which she rented. At first she stayed with her brother, she then moved to Ayios Dhometios, then to the block of flats known as Chanteclair. From 1981 she moved to the block where the flat, the subject matter, is situated. The flat in which she resides is identical to the subject matter and it is on the floor above it. She pays for it £60.- per month rent.

Because of her several movements, the respondent decided to buy her own flat and she bought the subject flat after its previous owner has assured her that the tenant, who is the appellant, knew that the flat was for sale. As soon as she concluded the agreement for the purchase of the flat, she informed the appellant that she had bought it and wanted to move into it. To this the appellant responded negatively and told her, amongst other things, that he was not prepared to vacate it unless Famagusta was returned. On several occasions she made attempts to persuade the appellant to vacate the flat but in vain. Although she suggested to the appellant a number of other flats, the appellant refused to inspect them. The respondent has not as yet been able to visit and inspect the flat.

On the 22nd November, 1983, the respondent received a letter from the owner of the flat she is renting, asking her to vacate it as the owner wanted to move there. No further action was taken by her landlord, however, until this day.

As regards the appellant, who is also a refugee from Famagusta, the trial Court found that he rented the subject flat in May 1976 at £40.- per month; that he lives in the flat with his wife; that when he was asked to vacate the flat he inspected a number of flats in the vicinity of the subject flat but as the rent of these flats was between £65.- and £100.- per month and they had no central heating, he refused to vacate the flat. It further found that the appellant, in addition to the financial burden that he was going to suffer by paying a higher rent, refused to vacate the flat for the reason that his habits would be affected adversely.

The trial Court found that the net salary of the appellant was £552.- per month. His wife was not working but she is the owner of 6,000 shares of the Bank of Cyprus.

The trial Court then proceeded to deal with the law applicable in this kind of cases for ejectment and having correctly found that the applicant - respondent in this appeal - has to satisfy the Court that the flat was reasonably required by her, proceeded to make its finding by applying the law to the facts of the case

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In its view, the trial Court held that considering all the circumstances of the case, as these appeared on the day of the hearing, and, amongst others, the fact that the tenant is a refugee, the financial condition of each side, the existence of similar premises for the landlord as well as for the tenant, the limited interest of the tenant to want to move to another flat, the size of each family, the even slight danger that the landlord would be forced to move to a sixth residence after becoming a refugee because the owners of the flat she rents may want to move there, the difference in the rent which the landlord pays from the one that she receives from the tenant, and the terms of the agreement between the Republic and herself as regards the loan contracted, and in the light of the provisions of the law, the authorities cited and the real facts of the case, the landlord reasonably required the flat for possession by her and her family.

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Having considered that the respondent lives with her family in a flat that she rents and which is situated above the one occupied by the appellant; that this flat is of the same size as that occupied by the appellant; that at the time she bought it she well knew that the flat was let to the appellant and that he was a protected tenant; that the respondent, who pays a higher rent for the flat in which she and her family live than that paid to her by the appellant, asked the latter to add £10.- per month to the rent he pays to her and that the landlord of the respondent's flat expressed, but did not pursue, his demand for her vacating the flat, we find that the flat occupied by the appellant cannot be said, in the light of the authorities on the issue, that it is reasonably required for occupation by the owner.

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On the question of hardship, the evidence does not suggest that the respondent will suffer more than the appellant if no order for ejectment is granted.

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In the result, we find that the judgment of the Rent Control Court on this issue was not warranted by the evidence.

Appeal allowed with no order as to costs.

PIKIS J.: This is an appeal by the tenant against a decision of the

Nicosia Rent Control Court whereby he was ordered to vacate the premises occupied as a residence following an application of the respondent for recovery of possession. Originally the matter was raised before us by way of case stated in accordance with the provisions of s. 7 of the Rent Control Law 23/83. Following the amendment of s. 7 brought about by Law 79/86, the case pending before us must be reviewed by way of appeal as provided in s.5(1) of the amending legislation. Consequently, the adjudicative powers of the Court are not confined to answering the questions raised, but extend to every matter in respect of which an order may be appropriately made as provided in subsection 3 of s.25 of the Courts of Justice Law. In this case the matter is of academic interest for the questions stated raised succinct questions that can, without difficulty, be restated into grounds of appeal directed against the judgment of the Court upon which the preamble to the questions raised is premised. In fact, the restatement of material findings preceding the questionnaire fashioned to the observations made in *Stylianides v. Paschalides** makes our task on appeal easier still in that we can, without more ado, trace the findings of the court bearing of the questions raised.

The questions stated for our opinion raise the following two grounds of appeal recounted in order of priority, namely:

- (a) Whether the factual findings of the Court support the legal conclusion that the premises were reasonably required by the respondent (owner), and if so
- (b) Whether in the circumstances of the case as revealed in the factual findings of the Court, greater hardship would ensue by making an order of recovery of possession rather than withholding it.

Recitation of the material facts as they emerge from the judgment of the Court and stated in the questionnaire submitted to the Supreme Court will make possible the examination of the case in its true context. The appellant, a lawyer, and his family were displaced from their home in Famagusta in the wake of the Turkish invasion in the summer of 1974. At first they found refuge in Limassol where they stayed until the early months of 1976. Then they moved to Nicosia where they rented the premises here under consideration, a fairly spacious flat for the accommodation of the

* (1985) 1 C.L.R. 49.

appellant and his wife. Their two adult children work abroad and are accommodated in the premises only on temporary trips to Cyprus for occasional visits to their country and parents. Until recently the appellant was the Chairman of the Military Court earning a substantial salary. However, his net earnings were considerably reduced on account of payment of instalments to meet debts they contracted, apparently for the needs of the family.

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Respondent too is a refugee who had, like the appellant, to cope with the vicissitudes of displacement. She is a teacher in a private school while her husband owns a drapery shop at Onásagoras Street, Nicosia. They have two minor children, one attending the Elementary and the other a Nursery school. The net earnings of their family were, as the Court found, slightly less than those of the appellant. They occupied and still do a flat identical in size to that occupied by the appellant, on the floor above the flat of the appellant and like the appellant they are statutory tenants having the protection of the law. In May 1983 she purchased the flat occupied by the appellant and in September of the same year she became its registered owner. She was aware of the fact the appellant was a statutory tenant. The premises were purchased for £14,000 - by loans raised from different quarters. Soon after she became the owner of the property, she requested the appellant to vacate the premises in order to make possible their occupation by the respondent. Appellant refused to heed her request, mainly on account of the fact that the lease of comparable premises would entail the payment of rent twice or more that paid for the premises of the respondent, that is to say, £40.- per month. The respondent herself is paying £60.- per month for the flat she occupies. Appellant also refused a request of the respondent to pay £10.- more per month by way of rent in order to mitigate the difference of £20.- between the rent paid for the two flats. Nonetheless this proposal is indicative of the absence of any real pressure upon the respondent to vacate the premises she occupies.

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At the trial the respondent laid stress on a letter written on behalf of the owner of the flat she occupies wherein a claim is made for recovery of possession of the premises on the ground that the owner and his family, who resided abroad, intended to return to Cyprus and occupy the premises for use as a residence. Seemingly the owner of the premises did no more to pursue his claim. The notice (Exhibit 2) addressed to the respondent did not convey, as

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we construe it, an immediate request for the vacation of the premises; it was more in the nature of a declaration of future intent on the part of the owner. In the preamble to the questionnaire stated for the opinion of the Supreme Court, it is unequivocally
 5 stated that respondent occupies the premises as a statutory tenant; and has, we may add, on that account, the full protection of the law.

It is rightly pointed out in the judgment that the first hurdle the owner must overcome in order to make a case for recovery of
 10 possession is to establish that the premises are reasonably required for occupation by the owner. The Supreme Court addressed itself on numerous occasions to the interpretation of identical provisions in the Rent Control Legislation repealed by Law 23/83 (see, inter alia, *Antoniades v. Panteli and Another*
 15 (1979) 1 C.L.R. 57; *Yiannopoulos v. Theodoulou* (1979) 1 C.L.R. 215). They followed the approach of English Courts to the interpretation of corresponding provisions of English statutes. We see no reason why we should depart from this approach and none has been suggested.

In the case of *Kennealy v. Dunne** attention is focused on the implications of the "requirement" that the owner must have of the premises in order to recover possession; it is explained that "requires" imports a subjective element, namely, that the owner genuinely wants to recover possession with a view to occupation
 25 of the premises. Then it is pointed out that the qualification of "reasonableness" changes the inquiry into the needs of the owner into an objective one making it incumbent upon the owner to prove not only that the premises are genuinely required for his or her needs but that the need is objectively justified as well. The test repeatedly adopted for ascertaining whether the premises are "reasonably required" by the owner is that suggested in *Aitken v. Shaw*** «A genuine present need something more than desire although something less than absolute necessity». The caselaw also establishes that the perspective from which the need must be
 30 assessed is that of a man of the world***, with the Court entrusted to contemplate what these reactions might be in the given circumstances of the case****

* [1977] 2 All E.R. 16

** (1933) SLT (Sheriff Court) 21, 22

*** Halsbury's Laws of England, 3rd Ed., Vol 23, p 184, *Cumming v. Danson* [1942] 2 All E.R. 653, C.A.; *Rhodes v. Cornford* [1974] 2 All E.R. 601, C.A.

**** *Shreeve v. Hallam* (1950) W.N. 140 (C.A.); Halsbury's (supra), p 815.

Riverting attention on Cyprus Rent Control Legislation introduced in the aftermath of the Turkish invasion, we must not lose sight of its objects, namely, to cope with scarcity of accommodation created as a result of the Turkish invasion or the mischief against which it is directed, that is, the disturbance of statutory protection on light grounds. The purpose of the Rent Control legislation enacted in 1974 and the context in which the legislation should be interpreted and applied, were discussed by the Supreme Court in *Papageorgiou v. Hadjipieras**.

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The immediacy of the need the owner has of the premises is necessarily dependent on the adequacy of other accommodation for the satisfaction of her needs and those of her family. In *Megarry on The Rent Acts***, it is suggested on the basis of caselaw*** that the element of immediacy necessary to sustain a claim for recovery of possession is lacking whenever the owner or any of the persons for whom recovery can be sought is a statutory tenant. Although a different conclusion may be reached as to the need if the owner is constrained by a moral obligation to vacate the premises****. In this case no suggestion of a moral obligation on the part of the owner to vacate the premises has been suggested or established.

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We are, with respect, in full agreement to the approach above suggested to the ascertainment of the element of immediacy necessary to justify the Court to order recovery of possession. Any other approach would weaken the protection given by law to a statutory tenant and ultimately defeat the objects of the law. More so in a case like the present where the owner purchased the property full well knowing that it was subject to rent control. To sustain the claim of the owner in this case would be, in our view, equivalent to recognizing as a valid proposition the existence of justification for recovery of possession whenever the owner independently of availability of other accommodation for satisfaction of his needs acquires rent controlled premises.

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The trial Court approached the case from a wrong angle making establishment of the reasonableness of the requirement of the owner for the premises dependent on balancing the financial

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* (1981) 1 C.L.R. 560.

** 10th Ed., 1 Text, p 286

*** *Duffield v. Gmshaw* (1947) E.G. 322 (C.A.). Regrettably we were unable to consult the relevant Law Report as it is unavailable at the library of the Supreme Court.

**** *Woodhouse v. Griggs* (1947) L.J.N.C.C.R. 138 (C.A.). We were unable to trace the report of this case too.

ircumstances of the parties In so doing they overlooked the
object of the law and the protection afforded by the law to the
tenant Considerations of comparable hardship only come into
play if the owner first establishes that the premises are reasonably
5 required for her needs Having failed to do so, it is unnecessary to
go into that question Therefore, I would allow the appeal and set
aside the order for recovery of possession, with no order as to costs

COURT In the result the appeal is unanimously allowed with no
order as to costs

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*Appeal allowed
with no order as to costs*