

1987 May 26

[TRIANAFYLLIDES P LORIS AND STYLIANIDES JJ]

MICHAEL VASSILIOU UNDER HIS CAPACITY AS ADMINISTRATOR OF THE ESTATE OF THE LATE SOTERIS CHAKLIDES DECEASED,

Appellant-Applicant,

v

THE ATTORNEY-GENERAL OF THE REPUBLIC, THROUGH THE CENTRAL COMMITTEE FOR PROTECTION OF TURKISH-CYPRIOIOT PROPERTIES,

Respondent

(Case Stated No 226)

Rent Control — Statutory tenancy — Nature of right — Death of tenant — Right does not vest in the administrator of his estate or devolve on his heirs, but transmitted to his spouse with whom he was residing at the time of his death — The Rent Control Law 23/83, section 2

Rent Control — The Rent Control Law 23/83 — Section 4 — Jurisdiction of Rent Control Court — Confined to «disputes arising out of the application of» that Law — No relationship of landlord and tenant or statutory tenant between parties to application — Said Court does not have jurisdiction Trespass — Outside ambit of said jurisdiction

5

Rent Control — The Rent Control Law 36/75 — Effect

10

The late Chaklides of Limassol became a statutory tenant by operation of the Rent Control Law 36/75 of a shop in Limassol. He remained in possession of the shop until his death in October, 1984. He left a wife who was cohabiting with him. The Attorney-General of the Republic applied to the Rent Control Court sitting at Limassol for an order of recovery of possession of the said shop. The respondent in the said application appellant before this Court - was the administrator of the estate of the late Chaklides

15

The trial Court held that the statutory tenancy vested in the administrator of the estate of the late Chaklides, whose wife had only a right to apply for grant to her of a tenancy, which she did not. Having dealt with the substance of the case, the trial Court issued the order for recovery of possession, as prayed for

20

Hence the present appeal*

5 Held, allowing the appeal: (1) The right conferred upon a statutory tenant is purely a personal right with which he cannot deal. As such, unless the statute expressly authorises him to pass it onto another person, it must cease the moment he parts with the possession or dies. Statutory tenancy is not a right which can be inherited. It does not devolve on the heirs or vest in the administrator of the estate of the deceased.

10 (2) Under section 2 of Law 23/83 «statutory tenant» includes one who was statutory tenant prior to the coming into operation of this Law. From the definition of «tenant» and «statutory tenant» in Law 23/83 it is clear that a statutory tenancy is transmitted on the death of a statutory tenant to his spouse with whom he was residing at the time of his death.

15 (3) The appellant-administrator was not a statutory tenant and, therefore, there was no relationship of landlord and tenant or statutory tenant between the applicant and the respondent in the application. As in virtue of section 4 of Law 23/83 the jurisdiction of the Rent Control Court is confined «to disputes arising out of the application» of that Law, the Rent Control had no jurisdiction. The tort of trespass, if committed by the administrator, is again outside the ambit of such jurisdiction.

20 *Appeal allowed.*
No order as to costs.

Cases referred to:

Meitz v. Pelengaris (1977) 1 C.L.R. 226,

Yiannopoulos v. Theodoulou (1979) 1 C.L.R. 215;

Polycast Panels Ltd. v. Vourkas Fabrics Ltd (1986) 1 C.L.R. 107;

25 *Marcroft Wagons Ltd. v. Smith* [1951] 2 K.B. 496;

HjiEvangelou v. Kermia Co. Ltd. (1971) 1 C.L.R. 375;

John Lovibond and Sons v. Vincent [1929] 1 K.B. 687;

Keeves v. Dean [1924] 1 K.B. 685;

In re Kakos (1984) 1 C.L.R. 876.

30 Case stated.

Case stated by the Chairman of the Rent Control Court of Limassol relative to his decision of the 20th February, 1984 in

* This appeal was made by way of case stated (Section 7 of Law 23/83), but in virtue of section 5(1) of Law 79/86 it was treated as an ordinary appeal.

proceeding under the provisions of the Rent Control Law, 1983 (Law No 23/83) instituted by the Attorney-General of the Republic against Michael Vassiliou in his capacity as Administrator of the late Sotens Chaklides whereby an order of possession was issued against the tenant

5

M Vassiliou, for the appellant

Chr Ioannides, for the respondent

TRIANTAFYLLIDES P The judgment of the Court will be delivered by Mr Justice Stylianides

STYLIANIDES J This appeal was made by case stated, as provided by Section 7 of the Rent Restriction Law, 1983 (No 23 of 1983)

10

Section 7 was repealed and substituted by Section 4 of the Rent Restriction (Amendment) Law, 1986 (No 79 of 1986) which provides that all decisions of the Rent Control Court are liable to appeal before the Supreme Court within 42 days from their issue

15

Under Section 5(1) of Law No 79/86, any pending «case stated» at the commencement of the operation of the said Law, will be tried and treated by the Supreme Court as ordinary appeal

The Attorney-General of the Republic by Application No 87/84 applied to the Rent Control Court sitting at Limassol for an order of recovery of possession of a shop situated at 49, Sarpolos Street, in Limassol town. The respondent in that application - appellant before us - is sued in his capacity as administrator of the estate of the late Sotens Chaklides of Limassol who passed away in October, 1983. He is described in the application as «statutory tenant»

20

25

The undisputed facts are -

The late Chaklides was in occupation of the said shop ever since 1959 as tenant. By a written contract of lease dated 24 11 75 the said shop was leased to him for one year as from 1 10 75. The period was extended for another year - (See exhibit No 2)

30

In the Rent Control Law, 1975 (No. 36 of 1975), an all embracing law that repealed and substituted all previous rent control legislation, a «statutory tenant» meant a tenant of immovable completed and first let before 31st October, 1974, a date that was extended to 31st December, 1978, by the Rent

35

Control (Amendment) Law, 1980 (No. 6 of 1980).

By this definition all the contractual tenancies of premises situated within a controlled area completed and let for the first time before 31st December, 1978, were transformed into statutory
 5 tenancies before the expiration of the period of contractual tenancy and the benefit of the Law was made available to all the tenants - (*Meitz v. Pelengaris*, (1977) 1 C.L.R. 226; *Yannopoulos v. Theodoulou*, (1979) 1 C.L.R. 215; *Polycast Panels Ltd. v. Vourkas Fabrics Ltd.*, (1986) 1 C.L.R. 107).

10 Chaklides became by operation of this Law a statutory tenant. He remained in possession of the premises as tenant until his death. He left a wife who, on the evidence before the trial Court, was cohabiting with him.

15 The appellant objected that the Rent Control Court had no jurisdiction as the administrator of the estate of the said deceased was not a statutory tenant and that the widow of the deceased was in possession of the shop as statutory tenant in virtue of the rent control legislation.

20 The trial Court held that the statutory tenancy of the deceased vested in the administrator of his estate who, therefore, was a statutory tenant of the premises. The wife of the deceased had only a right under the Law to apply for grant to her of tenancy which she did not. Having dealt with the substance of the case, the trial Court issued the order for recovery of possession, as prayed
 25 for.

We have to consider what is the nature of statutory tenancy. Is it a right or interest that forms part of the estate of the statutory tenant which vests in the administrator of his estate?

30 The Rent Control Law is social legislation with two objects: to secure the possession of the premises by the tenant and to keep rents at reasonable levels. Statutory tenancy is, strictly speaking, not a tenancy at law.

35 The right conferred upon a statutory tenant is purely a personal right. The rent control legislation creates a status of irremovability of the statutory tenant as an occupier of the premises - (*Marcroft Wagons Ltd. v. Smith*, [1951] 2 K.B. 496; *Evanthia Hji-Evangelou v. Kermia Co. Ltd.*, (1971) 1 C.L.R. 375, 378).

The right conferred upon the statutory tenant is a purely

personal right with which he cannot deal - (Scrutton, L.J., in *John Lovibond and Sons v. Vincent*, [1929] 1 K.B. 687). His right is a purely personal one and, as such, unless the statute expressly authorises him to pass it onto another person, must cease the moment he parts with the possession or dies - (*Keeves v. Dean*, [1924] 1 K.B. 685). 5

Statutory tenancy is not a right which devolves on the heirs or is vested in the administrator of the estate of a deceased. It is not a right which can be inherited. The administrator of the estate of the late Chaklides was not a statutory tenant of the shop in question and no right of statutory tenancy vested in him. 10

Under Section 2 of the Rent Control Law 1983 (No 23 of 1983), «statutory tenant» includes one who was statutory tenant prior to the coming into operation of this Law. From the definition of «tenant» and «statutory tenant» in Law No. 23/83 it is abundantly clear that a statutory tenancy is transmitted on the death of a statutory tenant to his spouse with whom he was residing at the time of his death. Thus, by operation of Law, the statutory tenancy is transmitted to his said spouse and/or by statutory substitution the surviving spouse residing with the deceased tenant acquires the status of statutory tenant. It is not necessary for the surviving spouse to make any request or application in order to become a statutory tenant, if she has the quality of cohabitation. 15 20

In the present case we deemed it unnecessary to determine whether such right was transmitted to the wife in view of any anticipated future litigation on the matter. 25

The appellant-administrator was not a statutory tenant. The jurisdiction of the Rent Control Court established by Section 4 of Law No. 23/83 is confined to cases referred to it with regard «to disputes arising out of the application» of that Law. As there was no relationship of landlord and tenant or statutory tenant between the applicant Attorney-General and the appellant-administrator, the Rent Control Court had no jurisdiction to entertain this application. If the administrator committed any act of trespass to immovable property, again this tort is outside the ambit of the Rent Control Courts - (*In re Kakos*, (1984) 1 C.L.R. 876). 35

In view of the aforesaid, in our judgment, the application for recovery of possession could not proceed against the administrator of the estate of the late Chaklides. The order made

by the Rent Control Court of Limassol was wrongly issued.

The appeal succeeds. The judgment of the trial Court is set aside. In view of the circumstances of this case we make no order as to costs.

5

*Appeal allowed with
no order as to costs.*