

1987 August 7

(DEMETRIADES, J)

CHARIS CHIROMERIDES,

Plaintiff,

v

CHRISTODOULOS PAPASTEFANOU

Defendant

(Application No 69/86)

5 *Prerogative orders — Certiorari and mandamus — Leave to apply for — The question is whether the applicant has made out a prima facie case — Landlord and tenant — Dismissal by a District Judge of an application for an interim order in an action by a Landlord against his tenant for a breach of covenant on the ground that in view of the Rent Control Law 23/83 he lacks jurisdiction — Leave to apply for the aforesaid orders granted*

10 On 22 12 83 the applicant filed an action against his tenant for relief for a breach of a covenant of the tenancy agreement. On the same day he filed an application for an interim order restraining the tenant from selling videos, videocassettes and other similar goods

The application for interim order was dismissed, on the ground that in the light of Law 23/83 the District Judge, who tried the application, had no jurisdiction

15 Hence the present application for leave to apply for an order of certiorari and mandamus

Held, granting the leave applied for (1) The question at this stage is not whether the order of certiorari or mandamus should be issued, but whether in the light of the material before the Court a prima facie case has been made out sufficiently to justify leave to apply for granting such orders

20 (2) As in this case such a prima facie case has been made out, the leave applied for would be granted

Leave granted

Application.

25 Application for leave to apply for an order of certiorari for the purpose of bringing up and quashing the order made by a Judge

of the District Court of Nicosia in Civil Action No. 7875/83.

Chr. Clerides, for the applicant.

Cur. adv. vult.

DEMETRIADES J. read the following ruling. This is an application by which the applicant prays -

5

(a) for the issue of an order of certiorari to remove into the Supreme Court and to be quashed the order made on the 8th March, 1986, by a Judge of the District Court of Nicosia in Action No. 7875/83, by which the application dated the 8th December, 1983, was dismissed, as well as for the annulment of the said judgment and/or order.

10

(b) For leave of this Court to apply for and issue an order of mandamus directing the District Judge of the District Court of Nicosia to hear and/or decide in accordance with the law the said application by which the plaintiff in the said action was asking for the issue of an interim order.

15

(c) All other consequential and antecedent directions be given.

The grounds on which the application is based are the following:

The Honourable Court and/or District Judge wrongly and in excess of his power refused to issue the interim order applied for and/or alleged that he possessed no jurisdiction and/or refused to issue a judgment and/or order and/or ruling on the facts. The Honourable Court and/or Judge gave wrong interpretation to the provisions of Law 23/83 and in particular its section 4(i).

20

The facts of the case, as they appear in the affidavit of Mr. Charis Chiromerides, dated the 5th September, 1986, are the following:

25

On or about the 22nd December, 1983, he filed an action in the District Court of Nicosia, seeking against his tenant relief for breach of a covenant of a tenancy agreement. On the same day an application was filed, by which he was seeking an interim order preventing the tenant, his servants and agents, from using the shop situated at 142(z) Strovolos Avenue, for the sale of videos, videocassettes and other similar goods which are also sold by other tenants of the plaintiff.

30

This application was opposed by the tenant. Judge Kronides, S.D.J. heard the application and dismissed it having found that in

35

view of the provisions of Law 23/83 he had no jurisdiction to try the case which, by virtue of Law 23/83, had to be transferred to the Rent Control Court.

- 5 It has been repeatedly said by this Court that in granting or refusing an application for leave to apply for such an order as applied for by the applicant, the Court has to exercise a discretion. The question which I have to decide at this stage of the proceedings is not as to whether the order applied for should be issued, but whether, on the material before me, there is a prima facie case made out sufficiently to justify the granting of leave to 10 the applicant to move the Court, in due course, to issue the orders of certiorari and mandamus.

- 15 *In the light of the contents of the affidavit accompanying this application and all other material before me, that is copy of the tenancy agreement and the affidavit of the plaintiff in Action No. 7875/83 of the District Court of Nicosia, on the contents of which the trial Judge dismissed his application for the issue of an interim order and, also, having heard arguments from counsel for the applicant, I am satisfied that a prima facie arguable case has been 20 made out for granting the application and I make the following order:*

- (a) Applicant is granted leave to apply for an order of certiorari and mandamus within one month from today. Any opposition to be filed within one month from service of such application.
- 25 (b) Copy of this order to be sent to the Registrar of the District Court of Nicosia for communication to the Judge concerned.

No order as to costs.

*Application granted.
No order as to costs.*