

MEHMET ALI SULAY,

*Appellant (Plaintiff),*

v.

ANANIYA KAZANDJIAN,

*Respondent (Defendant).*

*(Civil Appeal No. 4266).*

1958  
Dec. 4.  
1959  
Feb. 4.

MEHMET ALI  
SULAY  
v.  
ANANIYA  
KAZANDJIAN

*Rent Restriction—Premises used as a shoe shop—Recovery of possession or ejection—Compensation for loss of occupation—Method of assessment—Matters to be excluded—Rent (Control) Law, 1954, ss. 18 and 19.*

*Held:* By s.19 of the Rent (Control) Law, 1954, "Where by reason of the carrying on by the tenant in the premises of a trade or business a goodwill is attached thereto increasing the rental value thereof" the court "in giving a judgment or making an order under section 18 for possession or ejection" may, in certain circumstances, require the landlord to pay to the tenant compensation "for the loss of the occupation of the premises .....

An addition to the rental value arising from an increase in population or a change in trading conditions, or a shortage of suitable premises, must be disregarded in determining the increment in value of the premises at the time of the judgment or order.

*Per Curiam:* Where there is an increase in the rental value of the premises within s. 18 the extent of such increase must be determined in the light of the principles expressed in *Whiteman Smith Motor Company v. Chaplin* (1934) 2 K.B.35, *Ireland v. Taylor* (1948) 2 All E.R.450, and *Rialto Cinemas Ltd. v. Wolfe* (1955) 1 W.L.R.693.

*Appeal allowed.*

*Cases referred to:*

- (1) *Whiteman Smith Motor Company v. Chaplin* (1934) 2 K.B.35; 103 L.J. K.B.328.
- (2) *Ireland v. Taylor* (1948) 2 All E.R.450; (1949) 1 K.B.300; (1949) L.J. R. 305.
- (3) *Rialto Cinemas Ltd. v. Wolfe* (1955) 1 W.L.R.693; (1955) 2 All E.R.530.

**Appeal.**

The landlord appealed from the decision of Pierides, D.J., dated July 10, 1958, in action No. 3679/57, requiring him to pay to the tenant £200 compensation under s. 19 of the Rent (Control) Law, 1954. The facts appear in the judgment.

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*A. Dana* for the appellant.

*L. Clerides* for the respondent.

*Cur. adv. vult.*

The judgment of the Court was delivered by :

ZEKIA, J This is an appeal against an order of the trial Court requiring the landlord to pay £200 as compensation under section 19 of the Rent (Control) Law, 1954. The appellant obtained an order for the recovery of possession of his shop under section 18 sub-section (i) Section 19 of the said Law reads:

“Where by reason of the carrying on by the tenant in the premises of a trade or business a goodwill is attached thereto increasing the rental value thereof and by reason of giving up possession of the premises the landlord shall get the benefit of such increase whilst the tenant shall suffer a loss, the Court, in giving a judgment or making an order under section 18 for possession or ejection, may require the landlord to pay to the tenant such sum as would appear to the Court to be sufficient to compensate the tenant for the loss of the occupation of the premises, due regard being had to the benefit derived by the landlord, and effect shall not be given to such judgment or order until such sum is paid”.

The main requirements for an order of compensation appear to be:

- (a) that goodwill became attached to the business premises in question by reason of the carrying thereon by the tenant of some trade or business ,
- (b) that the rental value has been increased owing to such business having been carried on by the tenant;
- (c) that the landlord shall get the benefit of such increase ; and
- (d) the tenant shall suffer a loss by giving up possession of such business premises

The leading case on a business goodwill in relation to section 4 of the Landlord and Tenant Act, 1927, which section is similar to our section 19, is *Whiteman Smith Motor Company v Chaplin* (1934) 2 K B.35 In two more recent cases the principles enunciated in the said leading case were applied. These are *Ireland v Taylor* (1948) 2 All E R 450 and *Rialto Cinemas Ltd v Wolfe* (1955) 1 W L R 693 For the purpose of this appeal, however, we think that hardly any particular reference to these cases need be made because in the present case there appears to be no evidence to support some of the main requirements of section 19 which constitute the pre-

quisites for granting an order of compensation under it. The only evidence available before the trial Court is the evidence of the tenant which, even if full credit is given to it, is not sufficient to support a claim for compensation under section 19. We quote the relevant part of the evidence of the respondent:

"The rent is £4.250 mils per month but I spent for repairs of this shop until to-day an amount of about £500. I use the shop as a merchant of shoes *i.e.* I am selling in it shoes which either I buy from the local market, or which I import from abroad. I am dealing with shoes for the last 30 years. I have now one servant who assists me in my business. There is not now any other shop at Arasta street available for my business. The plaintiff did not ask me about the shop before he had bought it. Sometime the previous co-owner Mr. Rustem informed me that he sold the shop to the plaintiff, and upon this I sent the rent to the plaintiff who did not accept it, and I used to send it to him by Postal Orders. The value of my goods which I have in my shop is between 3 and 4 thousand pounds. Plaintiff has two other shops at the same street. The one which is now occupied by a third person is near the shop in question and the other one which is now occupied and used by the plaintiff and which is at a distance of about 50 metres from the shop in question. At Arasta street there are many other shops which are used as shops for sale of shoes and for sale of clothes and as tailoring-shops. The tailoring-shops are at a distance of about 50 metres from the shop in question".

The gist of his evidence is that he spent about £500 on the repairs of the shop in question during his tenancy and that he was a dealer in shoes for 30 years; the value of his stock in trade amounted to £3,000 — £4,000 and that he employed a servant to assist him in his business. The appellant landlord is going to demolish the premises in question and his business is that of a merchant tailor and there is nothing to indicate that he will benefit in some way or other from the goodwill allegedly attached to these premises, no evidence whatsoever showing that the rental value of the shop owing to the business carried on by the tenant has been increased. There is no evidence, for instance, as to the profit he was making originally at the inception of the tenancy and for an increase of profit, if any, due to the goodwill allegedly attached to the premises. If there was an increase in the rental value due to goodwill the extent of such increase should be determined (it should be ascertained) in the light of the principles expounded in the cases already referred to.

Lord Maugham J. in the leading case above cited stated that the 'normal rent' and the 'goodwill rent', if any, of

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business premises will have to be ascertained and the difference, if any, should guide a Court as to the amount to be awarded as compensation to a tenant. An addition to increase in the rental value arising from an increase in population or a change in trading conditions or a shortage in suitable premises for a particular trade or business is not to be taken into account in ascertaining the rental increase for the purpose of section 19. The increase of the rental value of the premises at the end of the lease might be wholly independent, as Lord Maugham puts it, of the direct result of the carrying on of trade or business by the tenant and this should be left out when enquiring for an increase attributable to a goodwill which came into being by carrying on trade or business by the tenant in the shop in question. Repairs and any improvements made in the shop by the tenant may be altogether irrelevant in ascertaining goodwill for the purpose of section 19 of the law. In England there is separate provision for compensating a tenant for improvements made on the premises held by him on the termination of the tenancy but this is kept distinct altogether from payment of compensation for a goodwill. See Landlord and Tenant Act, 1927, sections 1 to 3. There was evidence before the learned judge that the tenant would suffer loss by giving up possession but beyond this there was nothing — apart from guessing — to satisfy other requirements of the section.

The appeal is therefore allowed with costs on the scale of £200.

*Appeal allowed.*