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April 24

[TRIANTAFYLIDIS, P., A. LOIZOU, MALACHTOS, JJ.]

GARBIS
ZEYTOUNTSIAN
v.
THE
ATTORNEY—
GENERAL
OF THE
REPUBLIC

GARBIS ZEYTOUNTSIAN,

Appellant-Plaintiff,

v.

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Respondent-Defendant.

(Civil Appeal No. 5150).

Use and occupation of premises—Quasi-tenancy—Implied agreement to pay reasonable compensation for use and occupation of the premises rather than rent—Compensation or damages for such use and occupation—Assessment—Principles applicable—See further infra.

Use and occupation of premises—Compensation for damage caused to the premises—Measure of damages—Cost of repairs or diminution of value of premises—Date by reference to which damages should be assessed—Period required for repairs must be taken into account—Impecuniosity of the plaintiff (appellant) immaterial in this case—Impecuniosity may be relevant to the issue whether the person who suffered damage did fulfil his duty to mitigate damages—But this question does not arise in this case—Consequently, the alleged inability of the appellant to repair before judgment due to his impecuniosity does not entitle him to a larger amount of damages (there being no dispute that such would be the case if the date of judgment were to be taken as the basis of assessment).

Damages—General damages—Assessment—Use and occupation of premises—Damage to the said premises—Compensation for such use and occupation—Principles applicable—See supra.

Quasi-Tenancy—Use and occupation of premises without arrangement for payment of rent—Implied agreement to pay reasonable compensation for such use and occupation rather than rent—Damage caused to the premises—Assessment—See supra.

Landlord and Tenant—Quasi-tenancy—See supra.

Detinue and conversion—Damages—Measure of damages—Value of goods—Date by reference to which value should be assessed—Whether the claim is for detinue or conversion not a factor which, in the present case, can be of a decisive nature—See further supra.

The appellant is the owner of three houses in Nicosia ; they were fully furnished and each was being let until April, 1964, at a rent of £25 per month ; near the houses there existed two sheds belonging to the appellant in which' he stored furniture and other goods. In May 1964, the appellant was asked by an officer of the security forces to hand over to him the keys of the premises ; as a result, the security forces of the Republic took possession of the aforesaid premises and remained therein until about the middle of 1965 ; but it was not until February, 1966, that appellant came to know that they were evacuated finally. He found then that the premises had been stripped of their contents and were in a ruinous condition. The appellant immediately claimed compensation from the state and eventually instituted an action in the District Court of Nicosia. The trial Court held that the state was liable to pay compensation to the appellant and awarded him £11,701 as follows :

	£
(a) For damage to the houses	9,000
(b) For damage to the sheds.. ..	420
(c) For the use and occupation of the three houses from June 1964 until February 1966 (at the rate of £25 per month for each house)	1,481
(d) For damage to, or loss of, furniture and other goods in the houses etc.	800
TOTAL ..	11,701

Against this judgment the plaintiff took the present appeal (the State cross-appealing regarding item (a) hereabove). The issue in this appeal is not the liability of the State to pay compensation but solely the quantum of the compensation awarded.

It was argued by counsel for the appellant, *inter alia*, that as regards item (a) hereabove *viz.* the damage to the premises, the compensation ought to have been assessed by reference to the time of the judgment, and not to the data existing in 1966 as it was held by the trial Court. It was further argued, regarding item, (c) hereabove, *viz.* compensation for the use and occupation of the premises, that the appellant should have been awarded compensation for the occupation

and use of his premises for a period up to the date of judgment and, also, for a further period of about one year, as this was the space of time needed, in the circumstances to repair the premises. Regarding item (d) hereabove, i.e. the loss of the appellant's goods and furniture which perished during the time when the premises were in the occupation of the security forces, it was argued on behalf of the appellant that compensation for these goods ought to have been awarded on the basis of their value on the date of the judgment of the trial Court and not on the basis of their value on the date when it was found that they were missing as held by the trial Court; the appellant claiming under this head £2,800 instead of £800 which were awarded by the trial Court (*supra*).

Allowing in part the appeal (and dismissing the cross-appeal) the Supreme Court:—

Held, I: As to item (a) hereabove, namely as to the damage to the premises in question assessed at £9,000; dismissing in this respect the appeal and the cross-appeal:

(1) The general principle governing a situation as the present one is that damages must be assessed as at the date when the damage occurs, which is usually the same day as the cause of action arises, but may be later e.g. as at the date when the plaintiff discovers his said cause of action, but not, as it has been submitted by counsel for the appellant as at the date of judgment (cf. *Philips v. Ward* [1956] 1 W.L.R. 471, at p. 474; *Clark and Another v. Woollam* [1965] 2 All E.R. 353, at p. 357; *Archer v. Moss* [1971] 1 All E.R. 747). The appeal, therefore, on this ground fails.

(2) A point which was raised in relation to this particular issue was the alleged impecuniosity of the appellant (plaintiff) which prevented him from repairing the premises before judgment was delivered in his favour. As it appears from the passage of the judgment in the *Clark* case (*ib.*), the impecuniosity of the plaintiff did not influence in that case the decision as to the time at which damages were assessed. The impecuniosity might have been relevant to the issue whether the person who suffered damage did or did not fulfil his duty to mitigate the damage; but this is an entirely different proposition from the contention of the appellant in this case.

Held, II : Regarding item (c) hereabove viz. compensation for the use and occupation of the premises in question, allowing partly the appeal in this respect :

(1) In the circumstances of this case we are of the opinion that in assessing the compensation for use and occupation of the premises in question regard must be had also to the period necessary to repair the said premises ; and we award to the appellant such compensation for a further period of nine months at the same rate as the one fixed by the trial Court, viz. namely £75 per month. It follows that the appellant should receive an extra sum of £675 in this connection over and above the amount of £1,481 awarded by the trial Court (*supra*).

(2) This compensation for the period required for repairs is to be regarded as compensation for consequential loss ; and support for this proposition that such loss may, in a case of this nature, be taken into account is to be found, *inter alia*, in *Rust v. Victoria Graving Dock Company etc.* [1887] 36 Ch. D. 113.

Held, III : Regarding item (d) viz. the loss of furniture and other goods, dismissing the appeal in this respect :

(1) In our opinion, the appellant ought to have known in the particular circumstances of this case, as early as 1965, when he complained to the appropriate authority about the disappearance of his goods and furniture, that there was no question of his goods being detained with a view to their being returned to him and that they have been converted to their own use by others, for whose conduct the respondent was responsible.

(2) So, the appellant should, within reasonable time, have brought an action claiming damages for the loss of his goods ; and in our view, such reasonable time expired about the middle of 1966, when his claim for compensation was turned down.

(3) And the value of the goods at that time was as found by the trial Court (*viz.* £800) (that is to say there was no substantial change in the value during the interval of time since it was discovered that they were missing) and we see no reason to award more than that.

*Appeal partly allowed ;
cross-appeal dismissed.
Order for costs in favour
of appellant.*

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Per curiam : The appellant was awarded by the trial Court damages for the use and occupation of the premises, the action having been brought on that footing, which, we think, was a correct basis for his claim in the matter. This is a case in which the law implies from the conduct of the parties a promise to compensate the landlord for his loss by reason of the tenant's occupation of his premises. The action which can in such case be maintained is not to recover rent, but damages due on an implied agreement to pay for the use of the landlord's property, *and arises rather out of what may be called a quasi-tenancy* than from the strict relation of landlord and tenant (Cf. Woodfall on Landlord and Tenant, 27th ed. Vol. 1, p. 437, paragraph 1050).

The facts sufficiently appear in the judgment of the Supreme Court, allowing partly the appeal and dismissing the cross-appeal by the State.

Cases referred to :

- British Westinghouse Electric and Manufacturing Company Ltd. v. Underground Electric Railways Company of London Ltd.* [1912] A.C. 673, at p. 688 ;
- Rust v. Victoria Graving Dock Company and London and St. Katharine Dock Company* [1887] 36 Ch. D. 113 ;
- Sachs v. Miklos* [1948] 2 K.B. 23 ;
- Rosenthal v. Alderton and Sons, Ltd.* [1946] K.B. 374 ;
- Philips v. Ward* [1956] 1 W.L.R. 471 at p. 474 ;
- Clark and Another v. Woor* [1965] 2 All E.R. 353 ;
- Archer v. Moss* [1971] 1 All E.R. 747 ;
- Clippens Oil Company Ltd. v. Edinburgh and District Water Trustees* [1907] A.C. 291 ;
- Owners of Dredger Liesbosch v. Owners of Steamship Edison* [1933] A.C. 449, at p. 460 ;
- Hollebone and Others v. Midhurst and Fernhurst Builders Ltd. and Eastman and White of Midhurst Ltd.* [1968] 1 Lloyd's Rep. 38 ;
- Hole and Son (Sayers Common) Ltd. and Another v. Harrison of Thurnscoe Ltd. and Others* "The Times", November 24, 1972 ;
- Regis Property Co. Ltd. v. Dudley* [1959] A.C. 370, at p. 407.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Kourris, S.D.J. and Ioannou, Ag. D.J.) dated the 8th January, 1973, (Action No. 5238/69) whereby the sum of £11,701 was awarded to him as compensation for the use of certain premises of his by the security forces.

C. *Glykys*, for the appellant.

N. *Charalambous*, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The judgment of the Court was delivered by :—

TRIANTAFYLLIDES, P. : The salient facts of this case, as they appear from the record before us, are that the appellant is the owner of three houses in Nicosia ; these houses are in an area of the town where, due to intercommunal troubles, there had to be stationed security forces.

The houses were built in 1954, they were fully furnished and each was being let until April, 1964, at a rent of £25 per month ; near the houses there existed two sheds belonging to the appellant in which he stored furniture and other goods.

In May, 1964, the appellant was asked by an officer of the security forces to hand over to him the keys of the premises ; the security forces took, as a result, possession of such premises and remained therein until about the middle of 1965 ; but it was not until February, 1966, that appellant came to know that they were evacuated finally. He found then that the premises had been stripped of their contents and were in a ruinous condition.

He immediately claimed compensation from the State but the authorities denied, at first, that the premises had ever been used, or damaged, by security forces. The trial Court found that the State was liable to pay compensation to the appellant.

During the proceedings in this appeal there has been in dispute only the amount of compensation to which the appellant is entitled ; the liability of the State to pay to him compensation has not been denied.

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The total amount of compensation awarded by the trial Court is £11,701, as follows :

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	£
(a) For damage to the three houses ..	9,000
(b) For damage to the sheds (this item has not been in dispute)	420
(c) For the use and occupation of the three houses from June, 1964, until February, 1966	1,481
(d) For damage to furniture and other goods in the houses, sheds, garage and yard	800

In the case of *British Westinghouse Electric and Manufacturing Company, Limited v. Underground Electric Railways Company of London, Limited*. [1912] A.C. 673, Viscount Haldane L.C. in delivering his judgment in the House of Lords stated the following (at p. 688) :—

“In order to come to a conclusion on the question as to damages thus raised, it is essential to bear in mind certain propositions which I think are well established. In some of the cases there are expressions as to the principles governing the measure of general damages which at first sight seem difficult to harmonize. The apparent discrepancies are, however, mainly due to the varying nature of the particular questions submitted for decision. The quantum of damage is a question of fact, and the only guidance the law can give is to lay down general principles which afford at times but scanty assistance in dealing with particular cases. The judges who give guidance to juries in these cases have necessarily to look at their special character, and to mould, for the purposes of different kinds of claim, the expression of the general principles which apply to them, and this is apt to give rise to an appearance of ambiguity”.

So, in the present case, we shall proceed to reach our decision by applying the relevant general principles of law to the individual circumstances of this particular case.

We shall deal first with the claim of the appellant that he should have been awarded compensation for the occupation of his premises up to the date of judgment and, also, for a further period of about one year, as this was the space of time needed, in the circumstances, to repair the premises.

The appellant was awarded, at the trial, damages for the use and occupation of the premises, the action having been brought, as it appears from the pleadings, on that footing, which, we think, was a correct basis for his claim in the matter.

In Woodfall on Landlord and Tenant, 27th ed., vol. I, p. 437, paragraph 1050, there appears the following passage :—

“ We have now to consider the case of a relation of landlord and tenant existing without any arrangement at all for the payment of rent properly so called, and the case in which the law implies from the conduct of the parties a promise to compensate the landlord for his loss by reason of the tenant's occupation of his premises. The action which can in such case be maintained is not to recover rent, but damages due on an implied agreement to pay for the use of the landlord's property, and arises rather out of what may be called a quasi-tenancy than from the strict relation of landlord and tenant.”

As regards his aforesaid claim for compensation in respect of the period necessary to repair his premises, we find ourselves entitled and bound, in the circumstances of this case, to award to him such compensation for a period of nine months, at the same rate as compensation was granted to him by the judgment of the trial Court, namely £75 per month ; therefore, the appellant should receive an extra £675 in this connection. This compensation for the period required for repairs is to be regarded as compensation for consequential loss ; and support for the proposition that such loss may, in a case of this nature, be taken into account is to be found, *inter alia*, in *Rust v. Victoria Graving Dock Company and London and St. Katharine Dock Company*. [1887] 36 Ch. D. 113.

We shall deal, next, with the question of the damages for the loss of the goods of the appellant which perished during the time when the premises were in the possession of the security forces :

— It has been contended that compensation for these goods ought to have been awarded on the basis of their value on the date of the judgment of the trial Court and not on the basis of their value on the date when it was found out that they were missing ; the latter value has been agreed to by the parties to be that which was assessed

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by the trial Court, namely £800; the appellant, claiming compensation as per the value at the time of the judgment, has alleged that such value was £2,800.

In relation to the above issue arguments have been advanced as regards the question of whether the relevant claim of the appellant is for detinue of the goods or for their conversion; we found, in the end, that this is not a factor which, in the present case, can be of a decisive nature; in *McGregor on Damages*, 13th ed., it is stated, at pp. 696, 697, paragraph 1034 :—

“ Logically, since damages are given in lieu of the return of the goods, the market value should be taken at the time when they would have been ordered to be returned, *i.e.* at the time of judgment. That this represents the law was finally established by the Court of Appeal in *Rosenthal v. Alderton of Sons Limited* [1946] K.B. 374. Evershed J. there stressed that—

‘ the action of detinue was essentially a proprietary action implying property in the plaintiff in the goods claimed It was, and still is, of the essence of an action of detinue that the plaintiff maintains and asserts his property in the goods claimed up to the date of the verdict In our judgment an assessment of the value of the goods detained (and not subsequently returned) at the date of the accrual of the cause of action (*i.e.* of the refusal of the plaintiff’s demand) must presuppose that on that date the plaintiff abandoned his property in the goods: And such a premise is inconsistent with the pursuit by the plaintiff of his action of detinue. The significance of the date of the refusal of the plaintiff’s demand is that the defendant’s failure to return the goods after that date becomes and continues to be wrongful ’ ”. (*Ibid.* 377–378).

In the next paragraph 1035, of *McGregor on Damages* the following are added in relation to the *Rosenthal* case (*supra*) :—

“ Nevertheless the Court of Appeal made one interesting and important reservation, by saying that the election to sue in detinue despite a conversion is available to the plaintiff ‘ at any rate where he was not aware of the conversion at the time ’. (*Ibid.* 379). It may be difficult to find historical, or even analytical, justification for this modification but it represents

common sense, since it will prevent a shrewd plaintiff from sitting back on a rising market, for as long as the Statute of Limitations allows, before bringing his action. On a strict analysis it is submitted that the correct approach is to say that detinue may still be brought in such circumstances, but the calculation of the value will be subject to the plaintiff's duty to mitigate from the moment he was aware that the defendant was in breach of duty and that a cause of action had accrued to him, the plaintiff. These principles were in effect applied by the Court of Appeal in *Sachs v. Miklos* [1948] 2 K.B. 23, a suit in both detinue and conversion and already dealt with under conversion. Although the accent in the Court of Appeal's judgment was on the conversion, the same result was in effect reached in detinue, *i.e.* any rise in market value after the plaintiff knew or ought to have known that the goods had been sold, or at least after such further time elapsed as would reasonably be required to bring suit, was not to be taken into account in assessing the damages."

In the case of *Sachs*, above, Lord Goddard C.J. said (at p. 39).:—

"It seems to me that in assessing damages for detinue or for conversion (and, for myself, I do not see where the distinction is to be drawn between those two causes of action for this purpose) the damages are not necessarily and in all cases the value of the goods at the date of judgment."

In our opinion, the appellant ought to have known, in the particular circumstances of this case, as early as 1965, when he complained to the appropriate authority about the disappearance of his goods, that there was no question of his goods being detained with a view to their being returned to him and that they had been converted to their own use by others, for whose conduct the respondent was responsible; so, the appellant should, within reasonable time, have brought an action claiming damages for the loss of his goods; and, in our view, such reasonable time expired about the middle of 1966, when his claim for compensation was turned down. The value of the goods at that time was, as found by the trial Court, £800 (that is to say, there was no substantial change in value during the interval of time since it was discovered that they were missing) and we see no reason to award more than that.

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We come now to deal with the amount of £9,000 which was assessed as compensation for the damage caused to the premises of the appellant :

It is convenient to deal first with a cross-appeal by the respondent by means of which it is sought to reduce the above amount to £5,150, which is the amount claimed by the appellant, on the 29th June, 1966, on the basis of an estimate made by a building contractor in March, 1966.

The trial Court in refusing to allow the cross-appeal took the view that the estimate in question did not cover all the damage caused to the premises of the appellant and we are in full agreement with the trial Court in this respect. Furthermore, the trial Court, though it based its award of £9,000 on evidence given by a witness who had not inspected the premises in 1966, it gave proper reasons for which the amount of £9,000, after all proper adjustments had been made, could be safely treated as a correct assessment of the damage on the basis of the data existing in 1966 ; it is, indeed, noteworthy that another witness has testified that in 1967 he estimated the damage to be £9,000, and this shows, in our view, that the above conclusion of the trial Court was sufficiently correct so as to exclude our interference with it.

As a result we have to dismiss the cross-appeal.

The appellant has contended that he was entitled to compensation for the damage to the premises which ought to have been assessed by reference to the time of judgment, and not to the data existing in 1966 ; we cannot agree that this submission can be upheld in the present case :

The principle governing a situation such as this one is to be found in the case of *Philips v. Ward* [1956] 1 W.L.R. 471, where (at p. 474) Denning L.J. stated :—

“ The general principle of English law is that damages must be assessed as at the date when the damage occurs, which is usually the same day as the cause of action arises, but may be later.”

The *Philips* case, *supra*, was followed in *Clark and Another v. Woar* [1965] 2 All E.R. 353, where (at p. 357) Lawton J. said the following :—

“ In 1964, but unfortunately for the plaintiffs not until then, an effort was made to find out how much it would cost to put on the cement rendering. The architect drew up a specification and invited tenders.

The matter is slightly complicated by the fact that the plaintiffs discovered their cause of action in 1961. Unfortunately, may be because of lack of funds, they did not there and then get the work done. They have waited until the present time, and recently there has been a great increase in building costs. I was told, and have no reason to disbelieve, that the figure of £576 16s. 1d. which was appropriate for June, 1964, ought now to be increased by 12½ per cent. I was also told by Mr. Bailey, and I accept, that had the work been done in 1961, the cost would have been about ten per cent less than it would have been in June, 1964. What is the appropriate figure? This cause of action became enforceable by the plaintiffs when they discovered they had got it, and as I found it was concealed from them by fraud it seems to me the cause of action arose in the year 1961. In those circumstances the damage which they have suffered must be assessed at 1961 prices and not at either 1964 prices or, even less, at 1965 prices.”

The above case was applied in *Archer v. Moss* [1971] 1 All E.R. 747.

A point which was raised, in relation to the particular issue now under examination, was the impecuniosity of the appellants which prevented him from repairing the premises before judgment was delivered in his favour.

As it appears from the above-quoted extracts from the judgment in the *Clark* case, *supra*, the impecuniosity of the plaintiff did not influence in that case the decision as to the time at which damages were assessed.

It is correct that in *Clippens Oil Company, Limited v. Edinburgh and District Water Trustees* [1907] A.C. 291, it was said that lack of funds did not render it necessary for the party who suffered damage to fulfill its duty to mitigate the damage, but this is an entirely different proposition from the contention of the appellants, in the present case, that his inability to repair his premises before judgment, due to impecuniosity, entitles him to the larger amount of damages which would result, due to risen in the mean-time prices, if such damages are to be assessed by reference to the date of the judgment of the trial Court.

In *Owners of Dredger Liesbosch v. Owners of Steamship Edison* [1933] A.C. 449, Lord Wright stated (at p. 460) :—

“The respondents’ tortious act involved the physical loss of the dredger ; that loss must somehow be reduced

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to terms of money. But the appellants' actual loss in so far as it was due to their impecuniosity arose from that impecuniosity as a separate and concurrent cause, extraneous to and distinct in character from the tort; the impecuniosity was not traceable to the respondents' acts, and in my opinion was outside the legal purview of the consequences of these acts. The law cannot take account of everything that follows a wrongful act."

We, therefore, find no good reason for interfering with the assessment of the compensation, for the damage to the premises, at £9,000, as made by the trial Court.

In fixing this amount the trial Court took into account the cost of repairing the premises. It is true that in some other similar cases a different basis of calculation has been used, namely that of the diminution of value of the premises; but, taking into account the cost of repairs is, indeed, accepted as one of the possible correct approaches (see, in this respect, *Hollebone and Others v. Midhurst and Fernhurst Builders, Ltd., and Eastman & White of Midhurst Ltd.*, [1968] 1 Lloyd's Rep. 38, and *Hole & Son (Sayers Common) Ltd. and Another v. Harrisons of Thurnscoe Ltd. and Others*, reported in the London "Times" of the 24th November, 1972).

We would like to conclude this judgment by observing that we do think that the trial Court found correctly that there was a liability of the respondent to repair the premises of the appellant, in view of the establishment of a relationship in the nature of a tenancy for use and occupation; and though, indeed, the existence of this liability has not been really challenged in this appeal we might usefully refer to *Regis Property Co. Ltd. v. Dudley* [1959] A.C. 370, where (at p. 407) Lord Denning stated:—

"...there is no term of the tenancy—express or implied—which requires the tenant to do any repairs at all. He is not therefore, under the terms of the tenancy, responsible for any repairs—not even for 'some' of them. But, nevertheless he is, by the common law, under an obligation not to commit waste, that is to say voluntary waste; and he is also under an obligation to use the premises in a tenant-like manner."

In the result, we allow this appeal in part so as to increase the damages awarded by the trial Court by £675, making thus the total thereof £12,376, instead of £11,701. The

cross-appeal is dismissed. We award the costs of this appeal and of the cross-appeal in favour of the appellant ; though the appellant has succeeded only to a small extent in the appeal, he has faced successfully a serious challenge, regarding the judgment in his favour, by the cross-appeal and, therefore, we are not prepared to deprive him of any part of his costs in these proceedings.

*Appeal allowed in part.
Cross-appeal dismissed.
Order for costs as above.*

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