

ACHILLEAS LOIZIDES,

*Appellant,*

ACHILLEAS  
LOIZIDES

v.

KTIMATI KI ETERIA CHR. PANTZIARIS LTD.,

*Respondent.*

KTIMATI KI  
ETERIA CHR.  
PANTZIARIS LTD.

(Case Stated No. 159).

*Residential Premises (Temporary Provisions) Law, 1974 (Law 51 of 1974)*—“Has been substantially affected by the emergency” in section 5(1)(b) of the Law—Notion of—  
5 Tenant—Public officer—Factors relevant to the question of whether he has “been substantially affected” excluded from consideration by trial judge—No correct application of the law to the totality of the relevant facts of the case before the Court—Appeal allowed.

10 *Words and Phrases*—“Substantially affected by the emergency” in section 5(1)(b) of the Residential Premises (Temporary Provisions) Law, 1974 (Law 51 of 1974).

*Statutes—Construction*—“Substantially affected by the emergency” in section 5(1)(b) of the Residential Premises (Temporary Provisions) Law, 1974 (Law 51 of 1974).

15 Under s. 3 of the Residential Premises (Temporary Provisions) Law, 1974 (Law 51 of 1974) the monthly rent payable under a contract of lease may be reduced by 20%. This provision is applicable to all tenancies and it is rendered inoperative only if a particular case  
20 can be brought within any of the exceptions in section 5 of the Law; and in the present instance the relevant exception is that envisaged by subsection (1)(b) of section 5, namely if it is established that the tenant has not been “substantially affected by the emergency”; such  
25 emergency is defined in s. 2 of the law to be that which has been created by the Turkish invasion of Cyprus.

In approaching the issue of whether or not the appellant is a substantially affected tenant, in the sense of the said section 5(1)(b), the trial judge accepted to  
30 take into consideration for this purpose the amount

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deducted from the salary of the appellant, as a public officer, under the provisions of the Emoluments (Temporary Reduction) Law, 1974 (Law 54/74), but he excluded from consideration the fact that the Government did not pay to the appellant a cost-of-living allowance on his "13th salary" in respect of the year 1974, as well as the fact that the cost-of-living allowance payable monthly to the appellant ceased to be adjusted in accordance with the fluctuations of the cost-of-living index, as it used to be done before the Turkish invasion.

*Held*, 1. The expression "has been substantially affected by the emergency" in s. 5(1)(b) of Law 51/74 conveys the notion of a substantial worsening of the financial position as a whole of a tenant, as a result of factors attributable to the emergency created by the Turkish invasion of our country, and in a way affecting his capability to pay the full rent provided for under the terms of the tenancy; all the relevant, in this connection, factors have to be weighed together, without excluding from consideration anything which is attributable to the said emergency and has effected the tenant's financial capacity (see *Palser v. Grinling* [1948] 1 All E.R. 1 at p. 11 and *Woodward v. Docherty and Another*, [1974] 2 All E.R. 844 at p. 846).

2. The approach of the trial judge to the matter before him was too narrow and it was not consistent with the proper application to the facts of the case of the relevant legislative provision; in the light of the interpretation which we have given, as above, to the notion of substantially affected neither of the two factors excluded ought to have been excluded from consideration.

*Appeal allowed.*

Cases referred to :

*Palser v. Grinling* [1948] 1 All E.R. 1 at p. 11; 35

*Woodward v. Docherty and Another* [1974] 2 All E.R. 844 at p. 846.

Case stated.

Case stated by a District Judge of the District Court of Nicosia (Kourris, S.D.J.) relative to his decision of 40

the 24th April, 1975, in proceedings under sections 3 and 5 of the Residential Premises (Temporary Provisions) Law, 1974 (Law 51/74), instituted by Ktimatiki Eteria Chr. Pantziaris Ltd. against Achilleas Loizides, whereby the latter was treated as "having not been substantially affected as a result of the emergency".

*A. Dikigoropoulos*, for the appellant.

*L. Demetriades* with *A. Skordis* and *M. Papapetrou*, for the respondent.

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*Cur. adv. vult.*

The facts sufficiently appear in the judgment of the Court delivered by :

15 TRIANTAFYLIDIS, P. : In this Case Stated the issue to be determined, is, in effect, whether or not on the facts of the case, as found by the trial judge, the appellant was rightly treated as "having not been substantially affected as a result of the emergency" («δέν έχει επηρεασθῆ ούσιωδῶς ἐκ τῆς ἐκρύθμου καταστάσεως») in the sense of section 5(1)(b) of the Residential Premises 20 (Temporary Provisions) Law, 1974 (Law 51/74). As defined by section 2 of the same Law the "emergency" in question is that which has been created by the Turkish invasion of Cyprus.

25 Law 51/74 was repealed while the present proceedings were pending, by means of the Rent Control Law, 1975 (Law 36/75), but, as we have indicated during the hearing of this Case Stated, these proceedings can, nevertheless, be pursued to their conclusion in view of, *inter alia*, the provisions of section 10(2)(e) of the Interpretation 30 Law, Cap. 1.

The proceedings before the Court below were instituted under section 4 of Law 51/74 by the respondent company, as the landlord of the premises in which the appellant is residing as a tenant; the respondent applied 35 for a decision as regards the rent payable in respect of the premises, in view of the fact that the appellant sought to rely on section 3 of Law 51/74 in order to reduce by 20% the monthly rent payable by him under a contract of lease.

40 It is pertinent to point out, first, that the provision

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in section 3 of Law 51/74 for a 20% reduction is of a universal nature, applicable to all tenancies, and it is rendered inoperative only if a particular case can be brought within any of the exceptions in section 5 of the Law; and in the present instance the relevant exception is that envisaged by subsection (1)(b) of section 5, namely if it is established that the tenant has not been substantially affected by the aforementioned emergency. 5

It is, also, useful to stress that from the preamble to Law 51/74 there emerges clearly the intention of the Legislature to give relief and protection to financially distressed tenants; such Law is, therefore, a measure aiming at social justice. 10

With the foregoing in mind we have taken the view that the expression "has been substantially affected by the emergency" («έχει επηρεασθή ούσιωδώς έκ τής έκρύθμου καταστάσεως») in section 5(1)(b) of Law 51/74 conveys the notion of a substantial worsening of the financial position as a whole of a tenant, as a result of factors attributable to the emergency created by the Turkish invasion of our country, and in a way affecting his capability to pay the full rent provided for under the terms of the tenancy; all the relevant, in this connection, factors have to be weighed together, without excluding from consideration anything which is attributable to the said emergency and has affected the tenant's financial capacity. 15 20 25

In relation to the notion of "substantial" the following were stated in *Palser v. Grinling* [1948] 1 All E.R. 1, 11 by Viscount Simon: 30

"'Substantial' in this connection is not the same as 'not unsubstantial', i.e., just enough to avoid the de minimis principle. One of the primary meanings of the word is equivalent to considerable, solid, or big. It is in this sense that we speak of a substantial fortune, a substantial meal, a substantial man, a substantial argument or ground of defence. Applying the word in this sense, it must be left to the discretion of the judge of fact to decide as best he can according to the circumstances in each case, the onus being on the landlord. If the judgment of the Court of Appeal in *Palser's* case were to be under- 35 40

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stood as fixing percentages as a legal measure, that would be going beyond the powers of the judiciary. To say that everything over 20 per cent. of the whole rent should be regarded as a substantial portion of that rent would be to play the part of a legislator. If Parliament thinks fit to amend the statute by fixing percentages, Parliament will do so. Aristotle long ago pointed out that the degree of precision that is attainable depends on the subject-matter.”

The above approach to what is “substantial” was adopted with approval in *Woodward v. Docherty and Another* [1974] 2 All E.R. 844, 846.

In approaching in the present case the issue of whether or not the appellant is a substantially affected tenant, in the sense of section 5(1)(b), the trial judge accepted to take into account for this purpose the amount deducted from the salary of the appellant, as a public officer, under the provisions of the Emoluments (Temporary Reduction) Law, 1974 (Law 54/74), but he excluded from consideration the fact that the Government did not pay to the appellant a cost-of-living allowance on his “13th salary” in respect of the year 1974, as well as the fact that the cost-of-living allowance payable monthly to the appellant ceased to be adjusted in accordance with the fluctuations of the cost-of-living index, as it used to be done before the Turkish invasion. The reason given by the trial judge for refusing to take into consideration the said two factors is that the emoluments concerned were not emoluments which the appellant was already receiving and of which he was deprived due to the emergency created by the Turkish invasion, but they were only prospective increases of his emoluments of which he was deprived due to such emergency.

In our view this was too narrow an approach by the trial judge to the matter before him, and it was not consistent with the proper applicable to the facts of the case of the relevant legislative provision; in the light of the interpretation which we have given, as above, to the notion of substantially affected neither of the aforesaid two factors ought to have been excluded from

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consideration; it ought to have been taken into account to what extent the appellant has been deprived, in this respect, of emoluments which ordinarily would have formed part of his salary had it not been for the fact that the emergency supervened. Of course, in relation to the second of these two factors, namely the adjustment of the cost-of-living allowance in accordance with the fluctuations of the cost-of-living index, there is no finding by the trial judge as to whether or not the cost-of-living has risen since the Turkish invasion; thus, we do not know whether, in effect, the salary of the appellant would have been increased or decreased had the cost-of-living allowance continued to be adjusted according to the fluctuations of the cost-of-living index; this is a matter for the trial judge to decide on evidence to be adduced before him for the purpose.

Another reason, for which we think the trial judge erred in applying the notion of substantially affected to the facts of the present case, is because he compared the amount deducted monthly, as aforesaid, from the salary of the appellant, under Law 54/74, with his gross monthly emoluments, instead of with his net monthly emoluments, which remain after deductions such as those in respect of the "pay-as-you-earn" income tax, the pension contribution and the contribution to the social insurance fund, which were shown on the "salary advice" issued by the Treasury Department to the appellant, and which were factors which had, apparently, remained more or less constant and unaffected by the present emergency; because it is only by the latter method of comparison that it could be gauged to what extent the appellant had become worse off financially, in terms of actual emoluments, due to the special deduction made under Law 54/74; the trial judge had to look at the realities of the matter before him and, therefore, he had to take into account by how much the net monthly emoluments had been reduced as a result of the operation of Law 54/74.

In the circumstances we have reached the conclusion that the trial judge has not applied correctly the law to the totality of the relevant facts of the case before him and, therefore, this appeal by way of a Case Stated has to be allowed, with costs; and the case is remitted to

the trial judge with our opinion as expressed in this judgment in order that he should proceed to deal with the case accordingly.

*Appeal allowed with costs.*

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