1983 February 11

[HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

AMAZON HOLDINGS LTD. AND OTHERS,
Appellants-Defendants,

v.

MAROULLA K. IOANNIDOU,
Respondent-Plaintiff.

(*Civil Appeal No.* 5526).

Contract—Contract of lease—Damages for breach by lessee—Premises not vacant at the time of the contract—Tenants in possession not vacating the premises on the date the tenancy would commence —Agreement providing about such eventuality—Owner bringing an action against tenants in possession immediately upon the latters' default and obtaining judgment for eviction against them in a fairly short time—An appeal filed—Defendants terminating their agreement before disposal of the appeal—In the circumstances of this case default of the tenants in possession to deliver premises not an impossibility affecting the validity of the contract—Quantum of damages—Owner releting premises after the termination of the agreement at a reduced rent and for a period longer than the one provided in the original agreement—Measure of damages the difference between the two rents for four years.

By virtue of a contract in writing dated 13th March, 1971, the respondent-plaintiff who was the owner of a cinema hall let it to the appellants-defendants for a period of 4 years. Clause 2* of the contract provided that in case the present tenants of the subsisting tenancy would delay to vacate the premises the defendants would accept the commencement of the tenancy to be as from the day the owner would take vacant possession; and that in case vacant possession is not delivered at the expiration of the subsisting tenancy the owner should without delay, take all necessary steps for obtaining possession

* Clause 2 is quoted in full at p. 51 post.

of her property, without being liable for payment of compensation to the defendants.

The tenants in possession failed to deliver vacant possession at the expiration of their contract and the plaintiff obtained an order of eviction against them. The tenants appealed against this order; and the defendants by means of a letter dated 14.6.1972 informed the plaintiff that they considered the contract between them as being void ab initio and they did not intend to continue considering themselves bound by it. The appeal was withdrawn on the 21st September 1972 and the premises were let for a period of 6 years at the annual rent of £4,200 to the subsisting tenants.

Upon appeal by the defendants against the judgment of the District Court of Nicosia ordering them to pay £3,400 damages to the plaintiff, which consisted of the difference between the two rents multiplied by four years:

Held, that at no stage was the contract rendered void in law because of any act of impossibility i.e. by any event frustrating the venture and destroying the premises; that possible obstacles to the activation of the agreement of the parties were eventually overcome, and when the agreement was about to be put in force, the appellants arbitrarily and without any excuse in law sought to withdraw from the contract for no good reasons at all; that, therefore, the appellants were rightly held to be liable for the breach of the contract.

(2) That the damages were assessed on a proper basis and were rightly assessed for a period of 4 years, the duration of the contract; accordingly the appeal must fail.

Appeal dismissed.

Appeal.

Appeal by defendants against the judgment of the District Court of Nicosia (Stavrinakis, P.D.C. and Papadopoulos, S.D.J.) dated the 15th November, 1975 (Action No. 2800/73) whereby they were adjudged to pay to the plaintiff the sum of £3,400.- as damages for breach of contract.

L. Papaphilippou, for the appellants.

T. Papadopoulos, for the respondent.

Cur. adv. vult.

HADJIANASTASSIOU J. read the following judgment of the Court. This is an appeal by the defendants Amazon Holdings Ltd., from the judgment of the Full District Court of Nicosia where the said Court reached the conclusion that the defendants are bound to pay to the plaintiff Maroulla K. Ioannidou the sum of £3,400.000 mils with legal interest thereon.

The facts

The plaintiff, Maroulla K. Ioannidou is the owner of a cinema hall known as "Diana 3". Defendant No. 1 is a Limited Company carrying on cinematographic business, and defendants 2 & 3 are the two directors of the defendant company. On 13th March, 1971, by virtue of a contract in writing, the plaintiff let to the Amazon Holdings Ltd., the cinema hall in question for a period of 4 years as from the 1st November, 1971, at the yearly rent of £5,400.000 mils payable by monthly instalments of £450 in advance at the beginning of each month. The contract in question, exhibit 1, apart from the usual terms contained in the contract of lease, are those of essence and around which the present case was fought. Clause No. 1 translated into English reads as follows:-

> "By the present, the owner lets to the tenants her cinema hall with all installations and machinery found therein, excluding the projector."

Clause No. 2:

> "The tenants declare that they took notice (ἔλαβον γνῶσιν) of the subsisting tenancy of the property (τῆς παρούσης ἐνοικιάσεως τοῦ κτήματος) and in case the present tenants would delay to vacate the said building at the expiration of the said tenancy, they (defendants) accept the commencement of the tenancy to be as from the day the owner would take vacant possession of the property. Provided that in case vacant possession is not delivered at the expiration of the subsisting tenancy, the owner shall, without delay, take all necessary steps for obtaining possession of her property, without being in any way liable for payment of compensation on account of delay in delivering possession or otherwise."

It is an admitted fact that the tenants in possession, Ludia

United Cinematographic Enterprises Ltd., failed to deliver vacant possession at the expiration of their contract. On the following day, the 1st November, 1971, the plaintiff filed an action No. 6306/71 in the District Court of Nicosia against Ludia, claiming an order for eviction and damages (see exhibit 14). Indeed, on 8th November, 1971, the plaintiff informed the defendants about the filing of the action by a letter addressed to them dated 8th November, 1971. See exhibit 2.

The action in question was heard by the District Court of Nicosia and judgment was issued on the 27th April, 1972 in favour of the plaintiff by virtue of which Ludia were ordered to deliver vacant possession of the property on or before 1st August, 1972. In addition, Ludia were ordered to pay £15 per day by way of mean profits calculated on the basis of the rent agreed upon by the parties to these proceedings in their agreement (see exhibit 1).

The tenants in possession, Ludia, filed an appeal against the judgment issued against them and also applied for a stay of execution which was opposed by the plaintiff. The plaintiff kept all along the defendants informed as to the development of the case against Ludia. (See exhibits 2, 3, 4 & 5). On the contrary, the defendants, Pierides Chacholiades and Others, by a letter dated 14th June, 1972, informed the plaintiff that they consider the agreement, exhibit 1, as being void ab initio having no legal effect and being contrary to the provisions of the Contract Law. In the same letter, the defendants also made it clear that they did not intend to continue considering themselves bound by the contract indefinitely and this was because of the plaintiff's inability to deliver to them vacant possession of the premises in question.

The plaintiff, by a letter dated 28th June, 1972, made it clear to the other side to the effect that she was insisting on her rights under their contract. (See exhibit 7). Indeed, on 21st September, 1972, the appeal which was filed against the judgment of the District Court of Nicosia in Action 6306/75 was withdrawn. The plaintiff by virtue of a contract in writing dated 8 h September, 1972, let the premises to Ludia for a period of 6 years with retrospective effect as from 1st November, 1971, at the annual rent of £4,200 (see the contract exhibit 12).

There is no doubt that this has been a long and factually complicated case, and the Court handled the matter meticulously and with keen interest regarding the issues which it had to resolve. Furthermore, in going through the long findings of fact we are of the view that the findings made by the Court were warranted by the evidence and we think there is nothing further to be said about such findings, which we accept as being correct.

Legal Issues:

Having listened very carefully to the long and able arguments of both counsel, in our view the principal legal issue confronting the Court was one of construction in the first place and secondly the application of the provisions of the Contract Law.

Dealing with the construction of the contract, the Court formed the opinion that its enforcement was dependent to an extent on an act of a third party vacating the cinema, and to a necessary extent on the act of the lessor to secure vacant possession in accordance with his rights under the law and the terms of the contract of lease referred to earlier in this judgment with the third party. The trial Court concluded, having gone into the matter at length, that at no stage was the contract rendered void in law because of any act of impossibility, i.e. by an event frustrating the venture and destroying the premises.

Having given a lot of attention to the long arguments of both counsel, we find ourselves in full agreement with the statement of the Court that at no stage was the contract rendered void in law. We are also in agreement with the view taken by the trial Court that possible obstacles to the activation of agreement of parties were eventually overcome, and when the agreement was about to be put in force, the appellants arbitrarily and without any excuse in law sought to withdraw from the contract for no good reasons at all. With this in mind, we are of the view that the appellants were rightly held to be liable for the breach of the contract in question.

Turning now to the question of damages, having given the matter our full consideration, we have reached the view that the amount of damages were assessed on a proper basis and

the findings of the Court in this respect were rightly made, and we reject the submission of counsel for the other side that the Court reached a wrong conclusion. We would go further and state that the submission of counsel for the appellants regarding the mean profits, and that such profits ought to have been deducted from the award of the appellants, in our view is based on a misapprehension of the law and of the facts. Indeed, we would go further and state that the damages were assessed as from a date when the premises would be vacated for the third party and not later, and rightly it was assessed for a period of 4 years, the duration of the contract. Going through the meaning of the relevant regulation as to the length of the tenancy, we think that the contract was for a certain period extended to 4 years. The period between the dates that the contract was expected to run in our view was provisional and depended on the surrender of vacant possession.

For the reasons we have given we would dismiss this appeal with costs, but we think we ought to express our appreciation to both counsel for helping this Court in reaching its conclusions.

Appeal dismissed with costs.