1983 September 21

[HADJIANASTASSIOU, STYLIANIDES, PIKIS, JJ.]

GEORGHIOS CONSTANTINIDES (AKINITA) LTD., AND OTHERS,

Appellants-Plaintiffs.

v.

GEORGHIOS MAVROGENIS AND OTHERS,

Respondents-Defendants.

(*Civil Appeal No.* 6440).

Contract—Construction—Contract of lease—Covenant to effect repairs after vacating premises—Subsequent agreement relieving tenants of such obligation—Its construction fell to be determined as a matter of law by the Court—Principles governing its construction.

Evidence—Opinion evidence—Inadmissible unless witness an expert—Exceptions to the Rule.

The respondents-defendants were the tenants of certain premises belonging to the appellants-plaintiffs. Following an order of ejectment, on the application of the appellants, the respondents vacated the premises on 18.3.1978. The trial Judge dismissed appellant's action for damages for breach of the contract of lease arising out of the breach of a clause therein "to restore the premises, upon leaving them, to the excellent condition they had acknowledged to have received them, and make good any damage that might be occasioned to the premises by unauthorised alterations", having held that the relevant clause relied upon by the appellants was rescinded by a subsequent agreement* of the parties.

The trial Judge, sustained partly the claim of the appellants for mesne profits and awarded to them a sum of £150.-. In

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* The relevant part of the subsequent agreement reads as follows:
"It is understood that they shall (meaning the respondents) be entitled, when leaving the premises, to take all movable articles which are in their own property and they will not be obliged to make any repairs for the purpose of bringing the premises in their former state".

support of this claim the appellants adduced opinion evidence, emanating from appellant 3, regarding the rental value of the property at the time.

Held, (1) that like any agreement the construction of the subsequent agreement fell to be determined as a matter of law by the Court; that the relevant question is not what the parties intended to convey by the phraseology employed to signify their agreement but what they conveyed thereby as objectively reflected by the wording of the relevant clauses read in the context of the agreement as a whole; that the said subsequent agreement clearly aimed to relieve the respondents of every obligation to effect repairs after vacating the premises, thereby absolving them of the contractual obligations set up by appellants in aid of their claim; that the effect of this agreement was to absolve the respondents of the obligations under the clauses of the tenancy agreements relied upon to support the claim for breach of damages; accordingly this part of the appeal must necessarily be dismissed.

(2) That the opinion evidence of appellant 3 on the rental value of the property was inadmissible and ought strictly to have been rejected because, subject to well-defined exceptions, the opinion of a witness in contra-distinction to what he perceives as a fact, is inadmissible unless he is an expert, accepted as such by the Court, in the field of knowledge in which he expresses an opinion; and that the opinion of an expert is received subject always to factual premises being proved like any other fact; that in the absence of evidence tending to establish the rental value of the premises the course adopted by the trial Judge, of determining the damage of the appellants by reference to the rental payable at the time, which was the only admissible evidence marginally bearing on the subject, cannot be faulted; accordingly this aspect of the appeal must fail as well.

Appeal dismissed.

Cases referred to:

Saab and Another v. Holy Monastery of Ayios Neophytos (1982) 1 C.L.R. 499;

G.I.P. Constructions Ltd. v. Assiotis (1982) 1 C.L.R. 535;

Bahamas Trust Co. v. Threadgold [1974] 3 All E.R. 881 (H.L.);

Loucaides v. C.D. Hay and Sons Ltd. (1971) 1 C.L.R. 134;

English Exporters (London) Ltd. v. Eldonwall [1973] Ch. 415.

Appeal.

Appeal by plaintiffs against the judgment of the District Court of Nicosia (Artemides, Ag. P.D.C.) dated the 6th April, 1982 (Action No. 3092/78) whereby in an action for the recovery of damages for breach of contract of lease defendants were ordered to pay £150.-.

C. Ch. Velaris, for the appellants.

A. Papacharalambous, for respondents 1, 2, 4 and 5.

A. Haviaras, for respondent 3.

Cur. adv. vult.

HADJIANASTASSIOU J.: The judgment of the Court will be delivered by Mr. Justice Pikis.

PIKIS J.: The appellants were the owners of centrally located premises at Nicosia, leased to the respondents for use as a discotheque. It seems that in due course the respondents became statutory tenants. On 5.4.77 an order of ejectment was made, on the application of the appellants, directing the respondents to vacate the premises. Following an arrangement between the parties the Court sanctioned the suspension of the enforcement of the order upto 15.1.78. The respondents overstayed the extension but not for long. They vacated the premises on 18.3.78.

This appeal arises from the unsuccessful action of the appellants to recover damages for breach of the contracts of lease that first regulated the relationship of landlord and tenant between the parties and survived the convertion of the tenancy into a statutory one. The pertinent clauses breached in the contention of the appellants, attached liability to the respondents to restore the premises, upon leaving them, to the excellent condition they had acknowledged to have received them, and make good any damage that might be occasioned to the premises by unauthorised alterations. A sum of £1,835.- was claimed as damages resulting from breach of the aforementioned clauses of the two agreements that established the relationship of landlord and tenant between the parties.

In the same action the appellants joined a claim for mesne profits for the unauthorised occupation of the premises by respondents after 15.1.78. The claim was for a period longer

than the period between 15.1.78 and 18.3.78 when the premises were vacated; it included a claim for damages for an additional period allegedly needed for effecting the repairs for which the respondents were allegedly liable, upto July, 1978.

The respondents denied liability for damage for breach of contract as well as any liability for repairs or restoration work. The relevant clauses, notably 12 and 13, relied upon by the appellants to support their claim, were rescinded by a subsequent agreement of the parties preceding or forming part of the settlement of 5.4.77, in the proceedings, above mentioned, for recovery of possession. The existence of this agreement was admitted by the appellants; there was no dispute about its content either. On any view of its wording it purported to absolve the respondents of some or all their obligations under clauses 12 and 13, forming the basis of the action of the appellants. The relevant part of the agreement read:

> "It is understood that they shall (meaning the respondents) be entitled, when leaving the premises, to take all movable articles which are in their own property and they will not be obliged to make any repairs for the purpose of bringing the premises in their former state."

Surprising as it may appear, the appellants framed their claim and fashioned their prayer for damages without reference to the agreement of the parties of 5.4.77, a fact duly noticed by the learned trial Judge. Like any agreement, its construction fell to be determined as a matter of law by the Court. The relevant question is not what the parties intended to convey by the phraseology employed to signify their agreement but what they conveyed thereby as objectively reflected by the wording of the relevant clauses read in the context of the agreement as a whole - See, *Saab and Another v. Holy Monastery Ay. Neophytos* (1982) 1 C.L.R. 499; *G.I.P. Constructions Ltd. v. Assiotis* (1982) 1 C.L.R. 535; *Bahamas Trust Co. v. Threadgold* [1974] 3 All E.R. 881 (H.L.).

The learned trial Judge was not required to perform an unduly complicated task. The agreement of the parties was expressed in plain language and the meaning was fairly straight forward. It was held that it absolved the respondents of the

obligations allegedly breached. That put an end to the claim of the appellants for damages for breach of contract. The learned trial Judge inclined to the view that the damage caused was substantial but dismissed the contention that it was caused maliciously out of a desire to revenge the appellants for evicting them from the premises. Of course it was unnecessary for the Judge to debate this aspect of the case at all. For the claim sounded exclusively in contract and the remedies confined to damages for breach of contract.

Likewise it is unnecessary for us to go into the various submissions made by counsel for the appellants as to the liability of respondents for damages outside the realm of contract. We may remind of the observations made in *Loucaides v. C. D. Hay and Sons Ltd.* (1971) 1 C.L.R. 134, that it is essential that cases be tried and determined on the basis of the issues, as defined by the pleadings. The decision of the Court that respondents were not answerable for damages for breach of contract, also put an end to the claim of the appellants for damages for unauthorised occupation of the premises for any period beyond the date the premises were emptied, viz. 18.3.78.

Counsel for the appellants made a faint attempt to question the construction favoured by the trial Court of the agreement of 5.4.77. To be specific, he submitted that the agreement accompanying the settlement of 5.4.77 meant to relieve the respondents of repairs they might be liable to make under the contract, but not for damage caused after the settlement. Such interpretation would be arbitrary and contrary to the plain wording of the agreement of the parties. The agreement clearly aimed to relieve the respondents of every obligation to effect repairs after vacating the premises, thereby absolving them of the contractual obligations set up by appellants in aid of their claim. In agreement with the learned trial Judge, we rule that the effect of the settlement of 5.4.77 was to absolve the respondents of the obligations under the clauses of the tenancy agreements relied upon to support the claim for breach of damages. This part of the appeal must necessarily be dismissed.

The claim for mesne profits for the period between 15.1.78 to 18.3.78 amounting to £180.-, was partly sustained, a sum of

£150.- was awarded and judgment was entered accordingly. Counsel for the appellants argued that the decision was wrong because it ignored or overlooked material evidence consisting of

(a) the opinion of Michalakis Constantinides, one of the appellants - the manager of appellants 1- that the rental value of the property at the time was £3.- per day, and

(b) evidence of the rent at which the property was leased subsequent to the repairs. There was evidence before the trial Court that at some stage subsequent to repairs, the property was leased at a rental of £175.- per month, but not for long. Shortly afterwards the rental fetched from the lease of the property dropped to £50.- per month, a fact suggestive of the instability of the market.

As the learned trial Judge rightly concluded, so it seems to us, the above evidence offered no basis for the rental value of the property. The evidence of Michalakis Constantinides on the subject of the rental value of the property was inadmissible and ought strictly to have been rejected. Subject to well-defined exceptions, that need not concern us here, the opinion of a witness in contra-distinction to what he perceives as a fact, is inadmissible unless he is an expert, accepted as such by the Court, in the field of knowledge in which he expresses an opinion. The opinion of an expert is received subject always to factual premises being proved like any other fact. See, *English Exporters (London) Ltd. v. Eldonwall Ltd.* [1973] Ch. 415. In England the reception of expert evidence in civil proceedings is now regulated by the Civil Evidence Act 1972, that made substantial changes to the law relevant to the reception of expert testimony. Its provisions need not concern us for they have no application to Cyprus.

In the absence of evidence tending to establish the rental value of the premises, either by reference to the rental fetched from the lease of comparable premises or the capital outlay, the trial Judge was faced with virtually no evidence on the subject. He stirred a course that cannot, in the circumstances, be faulted. He determined the damage of the appellants by reference to the rental payable at the time which was the only admissible evidence

marginally bearing on the subject. And in order that such rent might best reflect market forces he took it at the level it would be unreduced by the provisions of the Rent Control Law - 36/75 (the reduction of 20%). If anything, it was a course favourable to the appellants about which they can have no legitimate complaint. Therefore, this aspect of the appeal fails as well.

The appeal is dismissed with no costs. (Costs were not claimed).

Appeal dismissed with no order as to costs.