1983 November 7

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

L. & A. TRYFON CO. LTD.,

Appellants-Plaintiffs,

v.

BLACK AND DECKER CO. LTD.,

Respondents-Defendants.

(*Civil Appeal No.* 5849).

Landlord and tenant—Void lease—Tenants entered and remained in possession—Under the void lease rent payable monthly, but calculated and expressed in terms of annual rent—Tenancy from month to month created—Three months' notice terminating the tenancy a valid one—Even if tenancy a yearly one notice given governed by clause 14 *of the void lease which was not inconsistent with a yearly tenancy*—Petrolina Ltd., v. Vassiliades (1975) 1 *C.L.R.* 289 *distinguishable on the basis of its facts.*

By means of three contracts of lease which were entered between February and September, 1972 the appellants leased certain premises of theirs to the respondents.

On the 1st November 1972 the parties concluded an entirely new agreement by means of which all the aforementioned three previous contracts were rescinded and were incorporated into the new one. It turned out, however, that this new agreement did not conform with the provisions of section 77 of the Contract Law, Cap. 149, because it was witnessed by only one person, and, therefore, it was a void contract.

The new agreement provided that its duration would be for a period commencing on the 1st November 1972 and ending on the 30th June 1977, and that the annual rent would be a sum of C£4,680, payable in equal monthly instalments of C£390 each for the first twenty months, and from then onwards the annual rent would be C£5,760 payable in equal monthly instalments of C£480 each. Also its clause 14 provided that the

respondents could terminate the said new agreement by giving three months' notice to the appellants on the expiration of the first two years of the tenancy.

As the period of the first two years of the tenancy would come to an end on the 31st October 1974, the respondents, through their advocate, gave notice, on the 6th September 1974, to the appellants that, pursuant to the said clause 14, they were terminating the tenancy after the expiry of three months as from the 1st November 1974.

The respondents vacated the premises on the 31st January 1975, in accordance with the notice given by them on the 6th September 1974, and as a result the appellant brought against them an action claiming the amount of C£2,400 as arrears of rent for the months of February, March, April, May and June 1975, at C£480 per month, that is for the period from the date when the respondents vacated the premises until the date when the action was filed.

The trial Court dismissed the action having reached the conclusion that the tenancy that had resulted after the respondents came to be in possession of the premises on the strength of a lease which turned out to be void was one from month to month and it, therefore, had been properly terminated by the above notice.

Upon appeal by the plaintiffs:

Held, that since this is an occasion on which rent which was payable monthly was calculated and expressed in terms of annual rent, what has arisen in the present instance was a tenancy from month to month; that, therefore, the finding of the trial Court, as regards the monthly nature of the tenancy was correct; and that, accordingly, the notice given to terminate it was a valid one (*Petrolina Ltd.* v. *Vassiliades* (1975) 1 C.L.R. 289 distinguishable on its facts).

Held, further, in the alternative, that even if such finding was wrong and the tenancy was a yearly one, then the notice to be given was governed by clause 14 of the void lease, which was not inconsistent with a yearly tenancy and, therefore, again the tenancy was validly terminated by the notice given on the 6th September 1974 in accordance with such clause 14.

Appeal dismissed.

Cases referred to:

Petrolina Ltd. v. *Vassiliades* (1975) 1 C.L.R. 289;

In re Threlfall, Ex Parte Queen's Benefit Society [1880] 16 Ch. D. 274 at pp. 281, 282;

Allison v. *Scargall* [1920] 3 K.B. 443 at pp. 449-450;

H. & G. Simonds Ltd. v. *Heywood* [1948] 1 All E.R. 260;

Charles Clay & Sons Ltd. v. *British Railways Board* [1970] 2 All E.R. 463; and on appeal [1971] 1 All E.R. 100.

Appeal.

Appeal by plaintiffs against the judgment of the District Court of Nicosia (Papadopoulos, S.D.J.) dated the 26th April, 1978 (Action No. 2852/75) whereby their claim for C£2,400.- as arrears of rent in respect of premises of theirs let to the defendants was dismissed.

Chr. Kitromelides, for the appellants.

L. Papaphilippou, for the respondents.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment of the Court. The appellants, who were the plaintiffs before the trial Court, have appealed against its judgment by means of which there was dismissed their claim against the respondents, who were the defendants, for an amount of C£2,400 which was, allegedly, due by the respondents to the appellants as arrears of rent in respect of premises of the appellants in Nicosia which were let to the respondents.

As has been found by the trial Court the parties entered, on the 5th February 1972, into a contract of lease in respect of part of the said premises of the appellants. Then, on the 14th March 1972, the parties entered into another contract of lease for additional space in the same premises and on the 22nd September 1972 they entered into yet another contract of lease for more space in such premises.

On the 1st November 1972 the parties concluded an entirely new agreement by means of which all the aforementioned three previous contracts were rescinded and were incorporated into the new one. It turned out, however, that this new agreement did not conform with the provisions of section 77 of the Contract

Law, Cap. 149, because it was witnessed by only one person, and, therefore, it is a void contract.

In the new agreement it was specified that its duration would be for a period commencing on the 1st November 1972 and ending on the 30th June 1977, and that the annual rent would be a sum of C£4,680, payable in equal monthly instalments of C£390 each for the first twenty months, that is until the 30th June 1974, and from then onwards the annual rent would be C£5,760 payable in equal monthly instalments of C£480 each. Also, by means of clause 14 it was provided that the respondents could terminate the said new agreement by giving three months' notice to the appellants on the expiration of the first two years of the tenancy.

As the period of the first two years of the tenancy would come to an end on the 31st October 1974, the respondents, through their advocate, gave notice, on the 6th September 1974, to the appellants that, pursuant to the said clause 14, they were terminating the tenancy after the expiry of three months as from the 1st November 1974.

There followed correspondence between the advocates of the parties in the course of which it became a disputed issue whether or not the notice given on the 6th September 1974, as aforesaid, had validly terminated the tenancy of the premises in question.

Eventually, the respondents vacated the premises on the 31st January 1975, in accordance with the notice given by them on the 6th September 1974, and as a result the appellant brought against them an action claiming the amount of C£2,400 as arrears of rent for the months of February, March, April, May and June 1975, at C£480 per month, that is for the period from the date when the respondents vacated the premises until the date when the action was filed.

At the trial it was contended by the appellants that once the agreement of 1st November 1972 was void there came about a tenancy from year to year which could be terminated only by a six months' notice expiring at the end of any particular year of the tenancy, whereas counsel for the respondents submitted that there was only created a tenancy from month to

month, or a tenancy at will, which was duly terminated by the notice given on the 6th September 1974.

Having considered the matter, in the light, inter alia, of the judgment of this Court in the case of *Petrolina Ltd.* v. *Vassiliades*, (1975) 1 C.L.R. 289, the trial Court reached the conclusion, on the basis of the particular circumstances of this case, that the tenancy that had resulted after the respondents came to be in possession of the premises of the appellants on the strength of a lease which turned out to be void was one from month to month and, therefore, it had been properly terminated by the aforementioned notice.

In the *Petrolina Ltd.* case, supra, the lease which was found to be void was a yearly one and the rent was paid yearly, and not by monthly instalments, and it was held (see p. 299 of the report of that case) that the tenant in that case, having entered into possession under a void lease, had become, by implication of law, a tenant from year to year upon the terms of the tenancy in so far as they were applicable to, and not inconsistent with, a yearly tenancy; and, useful reference may, also, be made in this respect to Halsbury's Laws of England, 4th ed., vol. 27, p. 84, para. 102 p. 135, para. 179, and Woodfall on Landlord and Tenant, vol. 1, 27th ed., p. 270, para. 652.

Having, in the present instance, examined as a whole the void agreement of 1st November 1972 against the background of the three previous contracts of lease which were rescinded by it, and in the light of the conduct of the parties in this case, we find that the present case is distinguishable, on the basis of its actual facts, from the *Petrolina Ltd.* case, supra, because this is an occasion on which rent which was payable monthly was calculated and expressed in terms of annual rent and, therefore, what has arisen, in the present instance, was a tenancy from month to month, as was found by the trial Court. It is, indeed, significant in this connection that under the terms of the agreement of 1st November 1972 the rent was to be increased during the tenancy not by reference to any particular year but after a period of twenty months.

Even if, however, we were to find that what has been created here by implication of law was a yearly tenancy, such tenancy was still governed by the terms of the void lease on the strength

of which the respondents took possession of the premises, in so far as such terms were not inconsistent with a yearly tenancy; and, in our opinion, in the circumstances of this case, the already referred to earlier in this judgment clause 14 of the void lease was not inconsistent with the notion of a yearly tenancy.

In Halsbury's Laws of England, supra, at p. 138, para. 182, it is stated that the parties to a tenancy from year to year may enter into special stipulations both as to the length of the notice and the time when the tenancy may be terminated; and it is in the absence of special stipulations or of special custom or statute that a yearly tenancy may be terminated by a half year's notice expiring at the end of a year of the tenancy. In *In re Threlfall, Ex parte Queen's Benefit Building Society*, [1880] 16 Ch. 274, Cotton L.J. stated the following (at pp. 281, 282):

> "But I know of no law or principle to prevent two persons agreeing that a yearly tenancy may be terminated on whatever notice they like".

In *Allison* v. *Scargall*, [1920] 3 K.B. 443, Salter J. said (at pp. 449, 450):

> "I know of nothing which prevents parties, in entering into an agreement for a tenancy from year to year, from stipulating that it should be determinable by a notice to quit shorter than the usual six months' notice; or that the notices to quit to be given by the landlord and the tenant respectively should be of unequal length; or that the tenancy should be determinable by the one party only by notice to quit and by the other party either by notice to quit or in some other way".

Further useful reference, in this respect, may be made, also, to *H. & G. Simonds, Ltd.* v. *Heywood*, [1948] 1 All E.R. 260, which was followed in *Charles Clay & Sons Ltd.* v. *British Railways Board*, [1970] 2 All E.R. 463 (and on appeal [1971] 1 All E.R. 1007).

In the light of the foregoing we have reached the conclusion that this appeal should fail and be dismissed on the ground that the finding of the trial Court, as regards the monthly nature of the tenancy, was correct and, therefore, the notice given to terminate it was a valid one. Also, in the alternative, even

if such finding was wrong and the tenancy was a yearly one, then the notice to be given was governed by clause 14 of the void lease, which was not inconsistent with a yearly tenancy and, therefore, again the tenancy was validly terminated by the notice given on the 6th September 1974 in accordance with such clause 14.

As regards costs it is hereby ordered that each party should bear its own costs of this appeal.

Appeal dismissed. Each party to bear its own costs.