

1985 February 18

[TRIANTAFYLIDIS, P., LORIS, STYLIANIDES, JJ.]

TTOFIS KYRIACOU AND SON LTD.,

Appellants-Respondents,

v.

ROLOGIS LTD.,

Respondents-Applicants.

(Civil Appeal No. 6386).

5 *Landlord and tenant—Order of possession—Made under section 16(1)(1) of the Rent Control Law, 1975 (Law 36/75)—Appeal against—Repeal of Law 36/75 by the Rent Control Law, 1983 (Law 23/83) after the appeal had been filed and before it could be heard—Appeal can be dealt with by applying the latter Law in view of section 32(2) thereof which has rendered its provisions retrospective and since an appeal is by way of rehearing—No provision in Law 10 23/83 in the nature of the said section 16(1)(1) of Law 36/75—Eviction order set aside.*

Rent Control Law, 1983 (Law 23/83)—Retrospective operation of—Section 32(2) of the Law—Section 10(2) of the Interpretation Law, Cap. 1.

15 *Rent Control Law, 1983 (Law 23/83)—Definition of “landlord” in section 2 of the Law—Different than its definition in section 2 of Law 36/75.*

20 In proceedings instituted by the landlords the trial Court made an order for the delivery of possession to them of premises which were in the possession of the appellants, as tenants. As against the order, which was based on section 16(1)(1) of the Rent Control Law, 1975 (Law 36/75) an appeal was filed. After the appeal had been filed, and before it could be heard, Law 36/75 was repealed, as from the 22nd of April 1983, by section 35 of the Rent 25 Control Law, 1983 (Law 23/83), and provision was made,

by section 32(2) of Law 23/83, that all appeals pending on the date of the coming into force of Law 23/83 were to be heard and determined by the Supreme Court taking into consideration the provisions of Law 23/83. In Law 23/83, and particularly in its section 11 which corresponds to section 16 of Law 36/75, there was not to be found a provision of the nature of subsection (1)(1) of section 16 of Law 36/75. 5

Held, that section 32(2) of Law 23/83 has rendered retrospectively applicable to all appeals, such as the present one, the provisions of Law 23/83 to the exclusion of any corresponding or other provisions of Law 36/75; and that, moreover, such section 32(2) clearly manifests an intention contrary to the application to an appeal of this nature of the provisions of section 10(2) of the Interpretation Law, Cap. 1; and that since this appeal is a proceeding by way of re-hearing (see rules 3 and 8 of Order 35 of the Civil Procedure Rules and section 25(3) of the Courts of Justice Law, 1960 (Law 14/60)) this Court, when dealing with an appeal such as the present one, can consider changes in the Law which have occurred since the trial and apply legislation which has been enacted since the trial and which is retrospective, as have been rendered retrospective the relevant provisions of Law 23/83 by virtue of section 32(2) of such Law; and that, therefore, it cannot uphold on appeal the eviction order that was made by the trial Court on the basis of section 16(1)(1) of Law 36/75, which has ceased to exist in the meantime, and when it has to apply to the present appeal, and to the rights of the parties to it, retrospectively Law 23/83 which contains no such provision as the said section 16(1)(1); accordingly the eviction order has to be set aside. 10
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Held, further, that since the trial Court was inclined to decide in favour of the respondent on their claim on the basis of section 16(1)(g) of Law 36/75, which corresponds to section 11(1)(f) of Law 23/83, had it not been for the judgment in *Michaelides v. Gavrielides* (1980) 1 C.L.R. 244; and that since in section 2 of Law 36/75 there was not to be found a definition of "landlord" such as that in section 2 of Law 23/83, the better course is to order a retrial of this case before the Rent Control Court of Li- 35
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1 C.L.R. *Kyriacou & Son Ltd. v. Rologis Ltd.*

massol regarding the claim to possession under section 11(1)(f) of Law 23/83.

Appeal allowed.

Retrial ordered.

5 Cases referred to:

Pyrghas v. Stavridou (1969) 1 C.L.R. 332 at p. 342;

Quilter v. Mapleson [1882] 9 Q.B.D. 672 at pp. 675, 676, 678;

10 *Attorney-General v. Birmingham, Tame and Rea District Drainage Board* [1912] A.C. 788 at pp. 801, 802;

Stovin v. Fairbrass [1919] 88 L.J. K.B. 1004 at pp. 1010, 1016;

New Brunswick Railway Co. v. British and French Trust Corporation Ltd. [1939] A.C. 1 at p. 33;

15 *Attorney-General v. Vernazza* [1960] 3 All E.R. 97 at p. 101;

Murphy v. Stone Wallwork Ltd. [1969] 2 All E.R. 949 at pp. 952, 959;

Wilson v. Dagnall [1972] 2 All E.R. 44 at pp. 48-50;

20 *Engineers' and Managers' Association v. Advisory, Conciliation and Arbitration Services and Another (No. 2)* [1979] 3 All E.R. 227 at p. 236 and on appeal [1980] 1 All E.R. 896;

Michaelides v. Gavrielides (1980) 1 C.L.R. 244.

25 **Appeal.**

30 Appeal by tenant against the judgment of the District Court of Limassol (Anastassiou, S.D.J.) dated the 29th January, 1982 (Appl. No. 36/81) whereby an order for the delivery of possession of the premises which were in their possession to the landlord was made.

Y. Potamitis with E. Theodoulou for the appellants.

G. Cacoyiannis with L. Petridou (Mrs.), for the respondents.

Cur. adv. vult.

TRIANFAYLLIDES P. read the following judgment of the Court. This is an appeal against the judgment of the District Court of Limassol by means of which there was made an order for the delivery of possession to the respondents, as the landlords, of premises which were in the possession of the appellants, as tenants. 5

Such order was based on section 16(1)(1) of the Rent Control Law, 1975 (Law 36/75), and it was made on the ground that it was considered by the trial Court reasonable to make it and that the trial Court was satisfied that other suitable accommodation was available for the tenants. 10

After the present appeal had been filed, and before it could be heard, Law 36/75 was repealed, as from the 22nd of April 1983, by section 35 of the Rent Control Law, 1983 (Law 23/83), and provision was made, by section 32(2) of Law 23/83, that all appeals pending on the date of the coming into force of Law 23/83 are to be heard and determined by the Supreme Court taking into consideration the provisions of Law 23/83. 15

In Law 23/83, and particularly in its section 11 which corresponds to section 16 of Law 36/75, there is not to be found a provision of the nature of subsection (1)(1) of section 16 of Law 36/75. 20

When the hearing of the present appeal was about to commence counsel for the appellants raised the issue of the effect, as regards the fate of this appeal, of the enactment, after the filing of such appeal, of Law 23/83. 25

We have no difficulty in arriving at the conclusion that section 32(2), above, has rendered retrospectively applicable to all appeals, such as the present one, the provisions of Law 23/83 to the exclusion of any corresponding or other provisions of Law 36/75; and that, moreover, such section 32(2) clearly manifests an intention contrary to the application to an appeal of this nature of the provisions of section 10(2) of the Interpretation Law, Cap. 1. 30 35

This appeal is, by virtue of rules 3 and 8 of Order 35 of the Civil Procedure Rules and of section 25(3) of the Courts of Justice Law, 1960 (Law 14/60), a proceeding by way of rehearing (see, inter alia, in this respect, *Pyrgas*

v. *Stavridou*, (1969) 1 C.L.R. 332, 342). Thus, the position is closely similar to the hearing of an appeal by the Court of Appeal in England under the previously in force rule 1 of Order 58 of the Rules of the Supreme Court in
5 England and the now in force rule, 3 of Order 59 of such Rules (see the Supreme Court Practice, 1982, vol. 1, pp. 922, 923).

Consequently, this Court, when dealing with an appeal such as the present one, can consider changes in the law
10 which have occurred since the trial and apply legislation which has been enacted since the trial and which is retrospective, as have been rendered retrospective the relevant provisions of Law 23/83 by virtue of section 32(2) of such Law.

15 Useful reference, in this respect, may be made to, inter alia, the following case-law in England:

Quilter v. Mapleson [1882] 9 Q.B.D. 672, 675, 676, 678, *The Attorney-General v. Birmingham, Tame, and Rea District Drainage Board* [1912] A. C. 788, 801, 802,
20 *Stovin v. Fairbrass* [1919] 88 L.J.K.B. 1004, 1010, 1016, *New Brunswick Railway Company v. British and French Trust Corporation, Limited* [1939] A.C. 1, 33, *Attorney-General v. Vernazza* [1960] 3 All E. R. 97, 101, *Murphy v. Stone Wallwork Ltd.* [1969] 2 All E. R. 949, 952, 959,
25 *Wilson v. Dagnall* [1972] 2 All E. R. 44, 48-50 and *Engineers' and Managers' Association v. Advisory, Conciliation and Arbitration Service and another (No. 2)* [1979] 3 All E. R. 227, 236 (which was reversed on appeal to the House of Lords on other points, [1980] 1 All E. R.
30 896).

We cannot, therefore, uphold on appeal the eviction order that was made by the trial Court on the basis of section 16(1)(1) of Law 36/75, which has ceased to exist
35 in the meantime, and when we have to apply to the present appeal, and to the rights of the parties to it, retrospectively Law 23/83 which contains no such provision as the said section 16(1)(1). So, we have to set aside the eviction order which was made by the trial Court.

On the other hand, there remains to be determined

whether the respondents are entitled to possession in view of their claim that the premises concerned are reasonably required by them for their own use, on the basis of section 11(1)(f) of Law 23/83 which is to be read together with the definition of "landlord" in section 2 of Law 23/83. 5
The said section corresponds to section 16(1)(g) of Law 36/75 which was, actually, relied on by the respondents as a ground for possession before the trial Court and in relation to which it appears that the trial Court was inclined to decide in favour of the respondents had it not 10
been for the judgment in *Michaelides v. Gavrielides*, (1980) 1 C.L.R. 244, which was regarded by the trial Court as excluding the respondents from claiming, as landlords, possession of the premises in question under section 16(1)(g) of Law 36/75; and it is to be noted that 15
in section 2 of Law 36/75 there was not to be found a definition of "landlord" such as that in section 2 of Law 23/83.

We have decided, in the exercise of our relevant powers, that the better course is to order a retrial of this case before the Rent Control Court of Limassol regarding the claim to possession under section 11(1)(f) of Law 23/83; and, in this respect, we follow a course such as that which was adopted in the *Stovin* case, supra. 20

We have decided to make no order as to the costs of this appeal. 25

Appeal allowed.
Retrial ordered.