1985 December 10

[A. LOIZOU, LORIS & STYLIANIDES, JJ.]

SOLON PANAYIOTOU,

Appellant-Plaintiff,

v.

ISLAND BEACH DEVELOPMENT LTD.,

Respondents-Defendants.

(Civil Appeal No. 6670).

Interpretation of documents—Written contract—Its interpretation is generally a matter of law for the Court—The object of the interpretation is to discover the real intention of the parties—When it is clear from the context in what sense a word was used, the sound rule is to attribute to it that sense, even though the word may be technical and have technically a different meaning—In the present case the word "rent" in the contract between the parties was clearly used by them to denote "damages".

The Contract Law, Cap. 149—Section 74.

The appellant as from 1975 was in the employment of the respondents and Brikent Estates Co. Ltd. He was entitled in accordance with the terms of his service to occupy a flat, the ownership of the respondents, free of any charge. On 31.7.81 the appellant was dismissed.

On 22.10.81 the appellant and his former employers reached a settlement of their disputes. The relevant contract provided inter alia that "in addition to the above Island Beach Development Ltd. (the respondents) undertake to pay £65 per month as per A. Angelides letter being the rental for his flat per month until such a time electricity supply is provided by the Electricity Authority, once the electricity is supplied the payment of rent will cease. The condition of this rent payment is on the understanding that he will vacate the existing premises on the 31.10.1981." And at the bottom of the contract it

is written: "Brikent Estates Co. Ltd. hereby undertakes to pay all the cost to the Larnaca Electricity Authority to supply electricity to Solon's Plot."

The relevant part of Mr. Angelides letter which is by reference incorporated in the contract is quoted at pp. 627-628 post.

Brikent Estates Co. Ltd. had converted an area of land into building sites; the appellant purchased one of these sites in 1975 and paid off its purchase price in 1978. He erected a two-storey three-bedroom house thereon which at the time of this contract was nearing completion.

The Electricity Authority had approved an application by Brikent Estates Co. Ltd. for the supply of electricity to the aforesaid building sites, including the one on which appellant's house was standing, subject to the payment of £3,000.- fixed charges. Brikent Estates Co. Ltd. failed to pay to the Electricity Authority the said amount of £3,000.-- or any part thereof.

On 31.10.81 the appellant delivered to the respondent vacant possession of the flat he was occupying and moved into his aforesaid house though no electricity was supplied to it. This situation still continues.

As a result the appellant brought an action against the respondents, claiming £65 per month as from 1.11.81 until 1.1.83.

The trial Judge construed the word "rent" in its primary sense, i.e. an amount payable by a tenant to the landlord for the right of occupation of the demised premises; he further dismissed the proposition that the amount of £65.- is payable irrespective of any legal liability of the plaintiff to pay rent for accomodation and concluded that the word "rent" denotes the payment of money in consideration for the plaintiff's use of accomodation and that as no such evidence was adduced the claim has not been proved.

Hence the present appeal.

Held, allowing the appeal (1) The interpretation of a written document is generally speaking a matter of law

for the Court. The object of interpretation of a written document is to discover the real intention of the parties as declared in the document. The construction must be as near to the minds and apparent intention of the parties as is possible and as the law permits. The cardinal presumption is that the parties have intended what they have in fact said. So, their words must be construed as they stand. As no contract is made in vacuum, in construing a document the Courts must always have regard to the factual background against which it was made.

When it is clear from the context of an instrument in what sense words are used in that instrument the sound rule of construction is to attribute to them that meaning, even though the words be technical and have technically a different meaning.

(2) In the present case it is clearly manifest that the parties used the word "rent" in the sense of "damages". The stipulated amount is the pre-estimated damages for the deprivation of the appellant of the use of his house due to lack of electricity.

(3) The quantum of damages in this case is governed by s. 74 of the Contract Law, Cap. 149. Its provisions intended to get rid of the distinction in English Law between liquidated damages and penalties.

(4) The appellant by moving into his house mitigated the damages to which the respondents were liable to pay. He is entitled to a portion only of the pre-estimated damages. The quantum is assessed at £20 per month, i.e. £280 for 14 months.

Appeal allowed with costs.

Cases referred to:

Ford v. *Beech* [1848] 11 Q.B. 852;

Graham v. *Ewart* [1856] 156 E.R. 1320;

Musgrave v. *Forster* [1871] L.R. 6 Q.B. 590, 596;

Tseriotis v. *Christodoulou*, 19 C.L.R. 216;

Iordanou v. *Anyftos*, 24 C.L.R. 97;

The Holy Monastery of Ayios Neophytos, v. *Yiannakis Neokli Antoniades* (1968) 1 C.L.R. 10;

Xenophontos v. *Makrides* (1969) 1 C.L.R. 488;

Kalisperas v. *Kababe* (1971) 1 C.L.R. 296.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Larnaca (Eliades, D.J.) dated the 20th December, 1983 (Action No. 102/83) whereby plaintiff's claim for £955.- by virtue of a written agreement was dismissed.

A. S. Angelides, for the appellant.

M. Nicolatos, for the respondent.

Cur. adv. vult.

A. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Stylianides.

STYLIANIDES J.: This is an appeal from the judgment of a Judge of the District Court of Larnaca whereby he dismissed the action of the plaintiff. It turns over the construction of a written contract between the parties.

The facts are simple and undisputed. The plaintiff as from 1975 was in the employment of the respondent company and Brikent Estates Co. Ltd. Part of the terms and conditions of his such service it was the occupation, free of any charge, as residence for himself and his family, of a flat, the ownership of the respondents, adjacent to the Sun Beach Castle.

On 31.7.81 he was dismissed. Disputes arose; negotiations took place which culminated into a written agreement dated 22.10.81 whereby the two companies undertook to pay to the appellant £6,500.- "for full and final settlement for his holidays, notice period and compensation, including directors' fees and secretarial fees of both companies". The contract of 22.10.81 contains further the following clause: "In addition to the above Island Beach Develop-

ment Ltd. undertakes to pay £65 a month rent as per A. Angelides (solicitor) letter being the rental for his flat per month until such a time electricity supply is provided by the Electricity Authority, once the electricity is supplied the payment of rent will cease. The condition of this rent payment is on the understanding that he will vacate the existing premises on the 31st October, 1981." And at the bottom of the same contract it is written: "Brikent Estates Co. Ltd. hereby undertakes to pay all the costs to the Larnaca *Electricity Authority to supply electricity to Solon's plot*".

The relevant part of A. Angelides's letter, which is by reference incorporated in the contract, reads as follows:-

«2. Η εταιρεία και/ή ο κ. Taskent προσωπικώς θα καταβάλουν άνευ καθυστερήσεως και εν πάση περιπτώσει ουχί αργότερον της 31.10.81 παν αναγκαίον και/ή καθορισθέν ποσόν προς την Αρχήν Ηλεκτρισμού Κύπρου ώστε να αρχίσουν άνευ καθυστερήσεως τα έργα ηλεκτροδοτήσεως των οικοπέδων, όπου βρίσκεται και το οικόπεδον του κ. Παναγιώτου με την εν αυτώ οικοδομήν του.

3. Νοουμένου ότι πραγματοποιούνται τα ως άνω δύο ταυτοχρόνως, ο κ. Παναγιώτου θα διευθετήση να εγκαταλείψη και παραδώση κενήν την οικίαν την οποίαν κατέχει μετά της οικογενείας του εις τα υποστατικά του Κάστρου με την παράλληλον υποχρέωσιν της εταιρείας να καταβάλλη ενοίκιον £65.- κατά μήνα εις κ. Παναγιώτου δια τόσο χρονικό διάστημα όσο απαιτηθή δια την αποπεράτωσιν της ηλεκτροφωτίσεως και της αδιακόπου παροχής ηλεκτρικού ρεύματος εις την υπό ανέγερσιν κατοικίαν του κ. Παναγιώτου εις τα οικόπεδα της εταιρείας.

Νοείται ότι η εν λόγω πληρωμή του ενοικίου θα μπορή να γίνη κατά μήνα ή εφ' άπαξ κατ' εκλογήν του κ. Παναγιώτου».

("2. The company and/or Mr. Taskent personally will pay without any delay and at any rate not later than the 31.10.81 everything necessary and/or the amount fixed to the Electricity Authority of Cyprus so that the electrification works of the plots, where

the building site of Mr. Panayiotou and his building standing thereon are situated, commence without delay.

3. Provided that the above two are implemented contemporaneously, Mr. Panayiotou will make arrangements to quit and deliver vacant possession of the house in the premises of the Castle which he possesses with his family with the parallel obligation of the company to pay rent £65.- per month to Mr. Panayiotou for such time as it will be required for the completion of the electrification and uninterrupted supply of electricity to the house of Mr. Panayiotou under construction on the building sites of the company.

Provided that the payment of the said rent may be made monthly or in one payment at the option of Mr. Panayiotou".

Brikent Estates Co. Ltd. had converted an area of land into building sites; the appellant purchased one of those sites in 1975 and paid off its purchase price in 1978. He erected a two-storey three-bedroom house thereon which at the time of this contract was nearing completion.

The Electricity Authority had approved an application by Brikent Estates Co. Ltd. for the supply of electricity to the aforesaid building sites, including the one on which appellant's house was standing, subject to the payment of £3,000.- fixed charges. Brikent Estates Co. Ltd. failed to pay to the Electricity Authority the amount of £3,000.- or any part thereof for the electrification of their area. and thus there was no electricity supply to the building site of the appellant and his house; no electricity could be supplied unless the whole amount was paid to the Electricity Authority by the aforesaid company. The vendor company is a party to the contract of 22.10.81 under consideration.

On 31.10.81 the appellant delivered to the respondents vacant possession of the flat he was occupying. He moved into his aforesaid house though no electricity was supplied to it due to the failure of Brikent Estates Co. Ltd. to pay the Electricity Authority. This situation continues.

The appellant by this action, instituted on 18.1.83, claimed £65.- per month as from 1.11.81 until 1.1.83.

The learned trial Judge construed the word "rent" in the contract in its primary sense, i.e. as an amount payable by a tenant to the landlord for the right of occupation of the demised premises. He continued: "I cannot subscribe to the proposition that the amount £65.- is payable irrespective of any legal liability by the plaintiff to pay rent for accommodation", and he concluded: "In my mind the use of the word 'rent' denotes the payment of money in consideration for the plaintiff's use of accommodation. As no such evidence has been adduced (of payment of rent for accommodation), I am not satisfied that the claim has been proved", and dismissed the action.

The interpretation of a written document is generally speaking a matter of law for the Court. The object of interpretation of a written document is to discover the real intention of the parties as declared in the document. The construction must be as near to the minds and apparent intention of the parties as is possible and as the law permits. The cardinal presumption is that the parties have intended what they have in fact said. So, their words must be construed as they stand. As no contract is made in vacuum, in construing a document the courts must always have regard to the factual background against which it was made.

In *Ford* v. *Beech*, [1848] 11 Q.B. 852, it was said:-

> "The common and universal principle ought to be applied: namely, that (an agreement) ought to receive that construction which its language will admit, and which will best effectuate the intention of the parties, to be collected from the whole of the agreement, and that greater regard is to be had to the clear intention of the parties than to any particular words which they may have used in the expression of their intent".

When it is clear from the context of an instrument in what sense words are used in that instrument, the sound rule of construction is to attribute to them that meaning, even though the words be technical and have technically

a different meaning; for it is only so that you can effectuate the intention—(*Graham* v. *Ewart*, [1856] 156 E.R. 1320; *Musgrave* v. *Forster*, [1871] L.R. 6 Q.B. 590, 596).

The ordinary meaning or technical meaning of the words of an instrument may be excluded, and a special meaning substituted, where this is necessitated by the subject-matter or contents of the instrument.

In the present case the paragraphs of Mr. Angelides' letter quoted above were in effect incorporated in the contract of 22.10.81.

Having considered the contract in the light of so much of its factual background as is permissible, we are unable to agree with the trial Judge that the word "rent" was used to denote an amount of money payable by a tenant to a landlord for occupation of the premises. The word "rent" could not be interpreted in the strict and primary sense. It is clearly manifest that the parties have used this word in the sense of "damages". This is supported by the context of the document and the necessity to effectuate the immediate intention of the parties to this contract. The stipulated amount of £65.- per month is the pre-estimated rental of the appellant's "flat"; it is clear that the word "flat" is used to denote the house of the appellant which was erected on the building site he purchased from Brikent Estates Co. Ltd. This is the pre-estimated damages for the deprivation of the appellant of the use of his house due to the lack of electricity.

The charges fixed by the Electricity Authority were not paid and electricity was not supplied to the appellant's house. Due to this failure the respondents would be liable to pay the amount of £65.- per month.

The quantum of damages in this case is governed by s. 74 of the Contract Law, Cap. 149, which was judicially considered by the Supreme Court in, inter alia, *Tseriotis* v. *Chryssi Christodoulou*, 19 C.L.R. 216; *Iordanou* v. *Anyftos*, 24 C.L.R. 97; *The Holy Monastery of Ayios Neophytos, Paphos* v. *Yiannakis Neokli Antoniades*, (1968) 1 C.L.R.

10; *Xenopoulos* v. *Makrides,* (1969) 1 C.L.R. 488; *Kalisperas* v. *Kababe,* (1971) 1 C.L.R. 296).

Section 74 is identical to s. 74 of the Indian Contract and Specific Relief Act, 1872, as amended by the Indian Contract (Amendment) Act, 1889.

These provisions were intended to get rid of the distinction in English law between liquidated damages and penalties. Zekia, J., in *Iordanou* v. *Anyftos* (supra) at p. 104 said:

> "It is clear from the wording of the section itself that whether the sums stipulated are in the nature of a genuine pre-estimate of damages or in the nature of penalty that makes no difference as to the discretion of the Judge to award as reasonable compensation to the party entitled thereto a sum not exceeding the amount stipulated. No doubt when the amount named in the contract is in the nature of pre-estimated damages, that will carry weight with the Judge in fixing the amount of damages but in either case a Court is precluded from awarding damages beyond and in excess of the amount named in the contract".

The appellant in the present case very commendably moved into a house without electricity supply though it is very rare, even in remote villages, for human habitants to be without electric current. By so doing he has mitigated the damages to which the respondents were liable to pay to him. The damages to which he would have been entitled—the whole sum of £65.- per month stipulated in the contract—were thereby considerably reduced. The appellant's use and occupation of his two-storey three-bedroom house with no electricity entitles him to a portion only of the pre-estimated damages.

Though the undisputed material before us is not the best possible, we decided not to send this case back for retrial on the issue of the quantum of damages, but doing the best we can on the material on the record, we assess the appellant's damages at £20.- per month. The appellant has the option under the contract to claim payment either

per month or at once. He elected to claim it per month and by this action he claims damages for 14 months.

In the result we would set aside the judgment of the District Court and enter judgment for the appellant against the respondents for £280.- with costs both before the District Court and before this Court.

Appeal allowed with costs.