

1985 December 9

[TRIANTAFYLLIDES, P., PIKIS AND KOURRIS, JJ.]

VAMASIA ESTATES LIMITED,

Appellants-Plaintiffs,

v.

SINGER SEWING MACHINE COMPANY,

Respondents-Defendants.

(Civil Appeal No. 6886).

5 *The Rent Control Law 23/83 s.2—Definition of “tenant” in s.2 of said Law—Aliens and alien controlled companies excluded from the ambit of the said law—Even if they were statutory tenants under the legislation (Law 36/75) repealed by Law 23/83.*

10 *The Interpretation Law, Cap. 1 s.10(2)(c)*—Meaning of said section—It creates a legal presumption against retrospective construction of repealing or amending legislation—The definition of “tenant” in section 2 of Law 23/83—Its application is prospective not retrospective.*

Interpretation of Statutes—Grammatical construction of—Should be adhered to unless it leads to unavoidably absurd results.

15 The respondents are an oversea company registered under Part VIII of the Companies Law, Cap. 113, controlled by aliens. They occupied the appellant’s premises as statutory tenants under the Rent Control Law 36/75.

20 The interpretation of the definition of “tenant” in the Rent Control Law 23/83, is the subject of this appeal. The trial Court held, relying on the provisions of section 10(2) (c) of the Interpretation Law, Cap. 1 and their application to the facts of this case in the absence of express provision

* Section 10(2)(c) of the Interpretation Law, Cap. 1 reads as follows:
«(2) Where a Law repeals any other enactment, then, unless the contrary intention appears, the repeal shall not—
(e) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or».

in Law 23/83 that the express exclusion of aliens and alien controlled companies from the ambit of Law 23/83 does not apply to such aliens or companies who were statutory tenants under Law 36/75, repealed by Law 23/83. 5

Held, allowing the landlords' appeal (1) All that s.10 (2) (c) of the Interpretation Law in fact creates is a legal presumption that rights accrued under the law in force at any particular time are not liable to be disturbed or taken away by a subsequent repeal or amendment of the law in the absence of express provision to that end in the repealing enactment. Retrospective construction of the repealing or amending legislation is only justified in face of express provision giving the law retrospective effect. No right accrues under section 10(2) (c) for the indefinite enjoyment of rights vested by law. Subject to the Constitution, such rights can be taken away by statute in the same way they were given in the first place. 10 15

(2) The definition of "tenant" is s. 2 of law 23/83 is not given retrospective effect. Its application is prospective, i. e. from the date of the promulgation of Law 23/83. in the Official Gazette onwards. 20

(3) The suggestion of respondents' counsel that the proviso to the definition of tenant in s.2 of Law 23/83 was inserted in the wrong place because of an obvious mistake in view of the definition of statutory tenant, encompassing statutory tenants under the repealed legislation, is unmerited. Only in the clearest of cases will the Court disregard the grammatical implication of a statutory provision or ignore the arrangement of sections of a statute. Grammatical construction must be adhered to, unless unavoidably absurd results will ensue therefrom. The insertion of the proviso at the particular part of section 2 of Law 23/83, was consistent with the aim of the legislature to confine the benefits of the law to the class of persons worst hit by the catastrophic consequences of the Turkish Invasion. 25 30 35

Appeal allowed.

Retrial ordered.

Costs against respondents. 40

Cases referred to:

Republic v. Menelaou (1982) 3 C.L.R. 419;

PapaConstantinou v. Spartakos (1985) 1 C.L.R. 202;

Stock v. Frank Jones (Trypton) Ltd. [1978] 1 All E.R. 948;

5 *R. v. Chard* [1983] 3 All E.R. 677 (H.L.);

R. v. Heron [1982] 1 All E.R. 993 (H.L.).

Appeal.

10 Appeal by plaintiffs against the judgment of the District Court of Nicosia (Hji Constantinou, S.D.J.) dated the 24th January, 1985 (Action No. 6516/84) whereby their action for recovery of possession of their premises at Stassandrou Str. No. 8, Nicosia, was dismissed.

M. Cleopas, for the appellants.

X. Clerides, for the respondents.

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Cur. adv. vult.

TRIANTAFYLLIDES P.: The judgment of the Court will be delivered by Pikis, J.

20 PIKIS J.: The interpretation of the definition of "tenant", appearing in the Rent Control Law, 1983⁽¹⁾, is the subject of this appeal. Despite the clear intention of the legislature to exclude from the ambit of the law aliens and companies under the control of aliens, the trial Court decided the exclusion had no application to aliens or alien-controlled companies who were statutory tenants under the previous
25 *Rent Control Law, Law 36/75, repealed by the 1983 legislation.* It is common ground that respondents are an oversea company registered under Part VIII of the Companies Law—Cap. 113—controlled by aliens and further
30 that they occupied the premises in question as statutory tenants under the provisions of Law 36/75. The trial Judge relied, inter alia, for his decision on the provisions of s.

⁽¹⁾ 23/83.

10(2) (c) of the Interpretation Law and their application to the facts of the case in the absence of express provision in Law 23/83, taking away rights accrued under the repealed legislation.

With respect the above interpretation of s.10(2) (c) is wrong. It is founded on an erroneous view of its provisions, as well as their application in practice. Section 10(2) (c) does not entrench the enjoyment of rights given by the law in force at any one time indefinitely; nor does it confer a right to the non alteration of the law at any future date. All that s.10(2) (c) aims to achieve and in fact creates is a legal presumption that rights accrued under the law in force at any particular period of time are not liable to be disturbed or taken away by a subsequent repeal of amendment of the law in the absence of express provision to that end. It is a presumption against the retrospective construction of legislation amending or repealing statutory provisions conferring rights and imposing obligations. Such construction is only justified in face of express provision giving the law retrospective effect.

The definition of "tenant" in s. 2 of Law 23/83 is not given retrospective effect. It does not purport to upset rights that accrued under the law that repealed Law 36/75. Its application is prospective, from the date of the promulgation of the law in the official Gazette onwards.

The notion of vested rights as encountered in s.10(2) (c) of Cap. 1 was the subject of detailed analysis in *Republic v. Menelaou*(1). No right accrues under s.10(2) (c) for the indefinite enjoyment of rights vested by law. They can be taken away by the statute, subject to constitutional constraints, in the same way that they are given in the first place. It emerges that this ground upon which the trial Court based its decisions rests on a fallacious interpretation of the provisions of s.10 (2) (c) and as such cannot be sustained.

(1) (1982) 3 C.L.R. 419, a decision of the Full Bench of Supreme Court. See also the recent decision of the Court of Appeal in *Papaconstantinou v. Spartakos* (1985) 1 C.L.R. 202.

Nevertheless we are invited by counsel for respondents to uphold the decision in view of the absurdity inherent in giving the definition of "tenant", in particular the proviso thereto purporting to exclude "aliens"; the meaning imported by the grammatical construction of the words used. In the suggestion of counsel the proviso was inserted in the wrong place because of an obvious mistake in view of the definition of statutory tenant, encompassing statutory tenants under the repealed legislation, supplied by the same section of the law. Therefore, we were asked to ignore the proviso to the definition of tenant, allegedly wrongly inserted thereat because of a misarrangement, as so to do would lead to an absurdity. Only in the clearest of cases will the Court disregard the grammatical implications of a statutory provision or ignore the arrangement of sections of the law made by the legislature. Grammatical construction must be adhered to unless unavoidably absurd results will ensue therefrom⁽¹⁾. Anomalies as such resulting from the natural construction of an enactment are no reason either for limiting the meaning of the words chosen or departing from the will of the legislature as expressed in the law—*Stock v. Frank Jones (Tripton) Ltd.* [1978] 1 All E.R. 948 (H.L.).

It appears to me that only where the provisions of the law make no sense in the context of the law as a whole and further conflict with the avowed objects of the law can the Court ignore a legislative provision or its position in the scheme of the law. Far from being persuaded that the proviso to the definition of tenant was inadvertently appended thereto, I regard its insertion at the particular part of s. 2 purposeful, consistent with the aim of the legislature to confine the benefits of the law to the class of persons who were worst hit by the catastrophic consequences of the Turkish invasion. Not only aliens and foreign controlled companies are excluded from the definition of "tenant", but Cypriots too who are not ordinarily residing in Cyprus. Consequently, there is no room whatever for departing from the tenor of the law as expressed by the legislature respecting the class of persons who qualify as tenants under s. 2 of Law 23/83.

⁽¹⁾ See, *inter alia*, *R. v. Chard* [1983] 3 All E.R. 677 (H.L.) *R. v. Heron* [1982] 1 All E.R. 993 (H.L.).

The appeal is allowed with costs. The case will be re-mitted back with direction to be determined on the re-maining issues in the light of this judgment.

Appeal allowed.
Retrial ordered.

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