

1986 February 14

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

POLYCAST (PANELS) LTD.,

Appellants-Applicants,

v.

VOURKAS FABRICS LTD.,

Respondents.

(Case stated No. 210).

5 *The Rent Control Law 36/75—Statutory tenant—Meaning of—Transformation of all contractual tenancies in a controlled area into statutory tenancies—Effect of—The Rent Control (Amendment) Law 6/80—Effect of—S. 21 of Law 36/75.*

10 *The Rent Control Law 23/83—Statutory Tenant—Includes every statutory tenant who was a statutory tenant before the coming into operation of this Law—Right of occupation of statutory tenant no longer depends on the protection of the original tenancy but on the legal right conferred upon him by the statute—Section 27 of the said Law—Section 11(1)(h) of same law—The requirement of the notice of not less than four months is only for the purpose of the specific ground of ejectment—It is not connected with a*
15 *notice of termination of the contractual tenancy—As the respondents are statutory tenants of the premises in question no notice of termination of the original contractual tenancy by the landlords was required.*

20 *Words and Phrases: “Terms and Conditions” in s. 27 of Law 23/83.*

25 On 8.1.71 a written contract of lease (exhibit No. 1) was executed by the then owner Papanephytou and the respondents, whereby the premises at Anexartias Street 144 were let to the respondents for three years’ period, commencing on 1.3.71. It is provided in the said contract

that if the tenant did not notify in writing of his intention to terminate the tenancy two months prior to the expiration of the said period, the lease would be renewed for a new period of three years and so on (και ούτω καθ' εξής).

On 27.3.78 another contract of lease was executed between the same parties, intituled "Supplement of Contract of Lease." This contract provided for the increase of the monthly rent to £130 per month and extended the tenancy to part of the premises *not existing in 1971*. 5

On 30.7.82 the ownership in the said premises was transferred to Gay Flair Co. Ltd. On the same day an advocate addressed on behalf of the new landlords a letter to the respondents informing them that the said premises were reasonably required by the landlords for demolition and reconstruction and that any form of existing tenancy and/or otherwise was terminated; according to the law in operation at the time three month's notice was given to the respondent's to vacate the premises and deliver vacant possession. 10 15

On 30.12.82 the premises were registered in the name of the appellants, who applied to the Rent Control Court for recovery of possession on the ground that they are reasonably required for demolition and reconstruction of a new building and that possession of the building to be erected is reasonably required for the use of the business of the appellants. The application is based on the Rent Control Law 23/83 as amended by Law 51/83, sections 11(1)(h) and 11(1)(g). The respondents contested the jurisdiction of the Court and the appellants' claim for recovery of possession on the ground that there is a valid existing contractual tenancy which has not expired or determined. The objection raised was taken preliminary to the hearing. 20 25 30

The trial Court held that the respondents are statutory tenants, but accepted that the contract of lease is still in operation. The Court held further that the landlord should have terminated such a contract by giving notice of not less than four months, as provided in s.11(1)(h) of Law 23/83, ending at the end of a three years' contractual 35

period. as provided in the contract. As a result the Court sustained the objection as to jurisdiction. .

5 Upon application by the appellants under s.7 of Law 23/83 the following case on points of Law was stated for the opinion of the Supreme Court.

 "A. The Court issued the following judgment:-

10 It accepts the preliminary objection and dismisses the application because in the notice given the period should have been four months' notice and to end at the end of the three years' period provided in the contract.

 B. (1) Since the Court found that the tenancy was a statutory tenancy, did the notices given or anyone of them legally terminate or not the said tenancy?

15 (2) Whether the Rent Control Law No. 6/80 by the amendment of s.2 of the Rent Control Law 36/75 covered more immovables or not."

20 *Held*, allowing the appeal (1) "Statutory Tenant" under the Rent Control Law 36/75 means a tenant of immovable (situated within a controlled area) completed and first let before the 31.12.74. By this Law all contractual tenancies were transformed into statutory tenancies even before the expiration of the contractual tenancy and the benefit of the Law was made available to all the tenants. Respondents became statutory tenants by operation of the said Law.

25 The Rent Control (Amendment) Law 6/80 provided that the definitions of "Immovable", "statutory tenant", "shop" and "dwelling house" in Law 36/75 shall be read, interpreted and applied as if instead of the date "31.12.74", it were stated in Law 36/75 the date "31.12.78". The tenancy, therefore, of the 27.3.78 was transformed by this Law into a statutory tenancy. The Rent Control Law 23/83, repealed Law 36/75.

30 Under the new law "statutory tenant" includes every statutory tenant before the coming into operation of this Law. The respondents continued, therefore, to be statutory tenants; and their tenancy is a statutory one.

(2) The right of occupation by the statutory tenant is

no more dependent on the protection of the original contract but on the legal right conferred upon him by the statute.

No notice of termination of the original contractual tenancy by the landlord was required in the present case. The requirement under s.11(1)(h) of a not less than four months' notice by the landlord to the tenant is only for the specific purpose of the ground of ejection that the premises are reasonably required by the landlord for demolition and reconstruction. The provision for this statutory notice cannot in any way be connected with the determination of an existing valid contractual tenancy. The connection of this with a notice for termination of a contractual tenancy is a sheer misdirection of Law.

Appeal allowed with costs both at the Appeal Court and the trial Court in relation to the preliminary objection.

Cases referred to:

- Meitz v. Pelengaris* (1977) 1 C.L.R. 226; 20
Yiannopoulos v. Theodoulou (1979) 1 C.L.R. 215;
Remon v. City of London Real Property Co. Ltd. [1921] 1 K. B. 49;
Philips v. Copping [1935] 1 K. B. 15;
Regional Properties Ltd. v. Oxley [1945] 2 All E.R. 418; 25
Katsikides v. Constantinides (1969) 1 C.L.R. 31;
Demetriou and Others v. Ioannides (1982) 1 C.L.R. 16.

Case stated.

Case stated by the Chairman of the Rent Control Court of Limassol relative to his decision of the 12th October, 1984 in proceedings under section 11(1)(g) and 11(1)(h) of the Rent Control Law, 1983 (Law No. 23/83) instituted by Polycast Panels) Ltd. against Vourkas Fabrics Ltd. whereby the preliminary objection raised by the tenants that the Rent Control Court has no jurisdiction to deal with the

case was accepted by the Court and the landlords' application for the recovery of possession of a shop at Anexartisia Street, Limassol, was dismissed.

E. Theodoulou, for the appellants.

5 *K. Koushios*, for the respondents.

Cur. adv. vult.

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

10 STYLIANIDES J.: The appellants are the owners of premises by virtue of Registration No. 35954 dated 30.12.82 situated in Limassol town, Katholiki Quarter, at Anexartias Street, No. 124. The respondents are in occupation of the said premises as tenants.

15 The appellants applied to the Rent Control Court of Limassol for recovery of possession of the said premises on the ground that they are reasonably required for demolition and reconstruction of a new building and that possession of the building to be erected is reasonably required for the use of the business of the appellants.

20 The application is based on the Rent Control Law, 1983 (Law No. 23 of 1983), as amended by Law 51/83, Sections 11(1)(h) and 11(1)(g).

25 The respondents-tenants raised objection that the Rent Control Court has no jurisdiction to deal with this case and the appellants are not entitled to the claim for recovery of possession as there is a valid existing contractual tenancy which has not expired or determined.

The subject property in 1971 consisted of a ground floor shop with a mezzanine and auxiliary buildings.

30 On 8.1.71 a written contract of lease (exhibit No. 1) was executed by the then owner Papanephytou and the respondents, whereby the said immovable was let to the respondents for three years' period, commencing on 1.3.71. It is provided in the said contract that if the tenant did not
35 notify in writing of his intention to terminate the tenancy two months prior to the expiration of the said period, the

lease would be renewed for a new period of three years and so on (καὶ οὕτω καθ' εἴης).

On 27.3.78 another contract of lease was executed between the same aforesaid parties. This is intituled «Συμπλήρωμα Ενοικιαστηρίου Εγγράφου»—(Supplement of Contract of Lease)—(Exhibit No. 2). It is a short document. The material part for this case are Clauses No. 1 and 2 They read:- 5

«1 Το παρὼν αποτελεί συμπλήρωμα του ενοικιαστηρίου εγγράφου της 8.1.1971 το οποίον εξακολουθεί να ευρίσκεται εν ισχύει και η σύμβασις εξακολουθεί να έχει την ἴδιαν νομικὴν προστασίαν και κατοχύρωσιν. 10

2 Επειδὴ ο ενοικιαστής χρησιμοποιεῖ τον ἄνω ὄροφον ὡς ἐργαστήριον ἐτοιμῶν φορεμάτων και ἀνέγειρον ἤδη ἑυλίνην πρόχειρον αἰθουσαν εἰς προέκτασιν του ἄνω ορόφου συμφωνεῖται ὅτι το ενοίκιον θα αὐξηθῆ και θα καταστή £130.- (εκατὸν τριάκοντα λίρας) μηνιαίως ἀπὸ 1.1.1978». 15

“1. This is a supplement of the contract of lease dated 8.1.71 which continues to be in force and which continues to have the same legal protection. 20

2. As the tenant uses the upper floor as a workshop for the making of ready to ware clothes and has already extended the upper floor by the erection of a wooden room it is hereby agreed that the monthly rent will be increase to £130.- as from 1.1.78”). 25

The tenant continued in occupation of the premises.

It appears that sometime prior to 30.7.82 the ownership was transferred from Papanophytou to Gay Flair Co. Ltd. who became thereby the landlords. 30

On 30.7.82 an advocate, on the instructions of Gay Flair Co. Ltd., as owners of the said premises, addressed a letter to the respondents whereby they were informed that the subject property was reasonably required by the landlord for demolition and reconstruction and any form of existing tenancy and/or otherwise was terminated; according to the Law in operation, three months' notice was given 35

to the respondents to vacate the premises and deliver vacant possession.

The objection raised in the answer was taken preliminary to the hearing, as it disposes of the whole case.

5 The trial Court in a reserved judgment held that the respondents are statutory tenants, the case under trial is a rent control case and the Rent Control Court undoubtedly has jurisdiction to try it. (See page 21 of the record). It proceeded, however, to consider whether the contract of
10 lease aforesaid was still in operation and accepted the submission of the defence that at any rate the contract is in operation and could only be terminated at the end of the three years' period either by the tenant or by the landlord—
15 (Page 22). The trial Court concluded that the landlord should have terminated the contract by giving a notice of not less than four months, as provided in s. 11(1)(h) of the Rent Control Law No. 23/83, ending at the end of a three years' contractual period, as provided in the contract.
20 sustained the objection as to jurisdiction and dismissed the application.

The appellants being aggrieved, applied by memorandum for a case stated on points of law under s. 7 and hence these proceedings before this Court.

25 The Case Stated, as submitted by the learned President of the Rent Control Court of Limassol, reads:-

“A. The Court issued the following judgment:-

30 It accepts the preliminary objection and dismisses the application because in the notice given the period should have been four months' notice and to end at the end of the three years' period provided in the contract.

35 B. (1) Since the Court found that the tenancy was a statutory tenancy, did the notices given or anyone of them legally terminate or not the said tenancy?

(2) Whether the Rent Control Law No. 6/80 by

the amendment of s. 2 of the Rent Control Law No. 36/75 covered more immovables or not.”

There is a third point of Law about leases in perpetuity which is irrelevant for the determination of the dispute of the parties before the Rent Control Court. 5

In 1971, when the first contract was entered into between the landlord and the respondents, the Rent Control Law in operation for business premises was Law No. 17/61. It covered business premises situated in a controlled area but did not include premises completed and first let after 10 the date of coming into operation of that Law, i.e. 17.10.61, or in relation to which there was a valid and binding contract between the tenant and the landlord during the validity of that contract. “Statutory tenant” meant a tenant who at the expiration or determination of his tenancy continued to 15 be in possession of the business premises.

The respondents were in possession of the subject premises as contractual tenants in virtue of the contract of 8.1.71.

The cataclysmic events of the summer of 1974 created 20 such a social and housing problem that the Legislature in order to remedy the mischief enacted the Rent Control Law, 1975 (Law No. 36 of 1975), an all embracing Law, that repealed all previous rent control legislation.

The definitions of “dwelling house” and “shop” were 25 formulated so as to include all premises situated within a controlled area, completed and let for the first time before 31.12.1974. “Statutory tenant” under the new Law means a tenant of immovable completed and first let before 31st 30 December, 1974. This was a radical change of the pre-existing legislation.

By this amendment all the contractual tenancies were transformed into statutory tenancies even before the expiry of the period of contractual tenancy and the benefit of the Law was made available to all the tenants—(*Meitz v. Pelen-* 35 *garis*, (1977) 1 C.L.R. 226; *Yiannopoulos v. Theodoulou*, (1979) 1 C.L.R. 215). This emerged clearly from the all embracing definitions of “statutory tenant” and “tenancy” in Law No. 36/75.

By the operation of this Law the respondents became statutory tenants.

5 In 1978 a new contract was signed, recognizing the validity of the 1971 contract of lease and extending the tenancy to part of the premises not existing in 1971.

10 By the Rent Control (Amendment) Law, 1980 (Law No. 6 of 1980) a substantial change was brought to the definitions of "statutory tenant" and "shop". Section 2 provided that the definitions of "immovable", "statutory tenant", "shop" and "dwelling house" in the basic Law shall be read, interpreted and applied as if instead of the date referred to therein "31st December, 1974", it were stated the date "31st December, 1978."

15 In view of this amendment "shop" meant shop situated in controlled area and completed and let for the first time before 31st December, 1978, and "statutory tenant" the tenant of immovable completed and first let before 31st December, 1978. By operation of this Law, the tenancy of 27th March, 1978, was transformed into a statutory tenancy.

20 The Rent Control Law, 1983 (Law No. 23 of 1983) repealed Law No. 36/75.

25 "Statutory tenant" under the new Law means tenant of immovable who after the expiration or determination of the first tenancy continues to possess the immovable, and includes every statutory tenant before the coming into operation of this Law. Thus every tenant who was a statutory tenant in virtue of Law No. 36/75 continues to be a statutory tenant. The respondents are now within the ambit

30 of "statutory tenant".

Section 27 of the Rent Control Law No. 23/83 reads:-

35 "27. - (1) A tenant, who, under the provisions of this Law, retains possession of any dwelling house or business premises shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this Law, and shall be entitled to give up possession

of the dwelling house or business premises only on giving such notice as would have been required under the original contract of tenancy”.

It reproduces verbatim the provisions of s. 21 of Law No. 36/75 which is a reproduction of identical provision, with the omission of some words at the end relating to giving notice by a tenant, of s. 15(1) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, and of the Rent Restriction Legislation in this country since 1942.

The phrase “terms and conditions” is not very technical. This provision is an indication as to the legal position of a person who continued in occupation of premises merely by reason of the protection afforded by the Law—(per Bankes, L.J., in *Remon v. City of London Real Property Co. Ltd.*, [1921] 1 K.B. C.A. 49). This provision is not framed as to extend to the case of the payment of rent; it is not dealing with rent—(*Philips v. Copping*, [1935] 1 K.B. 15; *Regional Properties Ltd. v. Oxley*, [1945] 2 All E.R. 418; *Frixos Katsikides v. Michael Constantinides*, (1969) 1 C.L.R. 31).

The duration of a tenancy under the original contract and the right of a landlord to claim ejectment order in relation to the provision of s. 21 of Law No. 36/75 were judicially considered in *Yiannopoulos v. Theodoulou*, (supra), and *Demetriou and Others v. Ioannides*, (1982) 1 C.L.R. 16.

In *Yiannopoulos* case it was held that the landlord could seek order for possession under s. 16(1)(g) of the Law, which corresponds to s. 11 of Law No. 23/83, prior to the expiry of the period of the contractual tenancy. More candidly, however, in *Ioannides* case it was held that, since s. 21(1) of Law No. 36/75 relegates to ineffectiveness every term of a contract of lease that is not consistent with the provisions of the law, any contractual term that confers a right to remain in occupation, notwithstanding the existence of one or more of the grounds set out in s. 16(1), entitling an owner to recover possession, is abrogated and consequently invalid. The power to order ejectment is not dependent on the rights of the owner, but on the status of

the premises and the existence of the factors enumerated in the successive provisions of s. 16. Similarly, a tenant has the amenity to vacate the controlled premises on giving only the notice provided in the original contract if there is such
5 a provision.

Section 11 empowered the Court to make an order of recovery of possession in respect of the rent controlled premises, that is to say, controlled dwelling houses and shops, without reference to the owner.

10 The trial Court rightly held that the respondents are statutory tenants and their tenancy a statutory one.

The right of occupation by the statutory tenant is no more dependent on the protection of the original contract but on the legal right conferred upon him by the statute—
15 (*Remon v. City of London Real Property Co. Ltd.*, (supra)). He is vested only with a statutory right of irremovability.

No notice of termination of the original contractual tenancy by the landlord was required in the present case.
20 The requirement under s. 11(1)(h) of a not less than four months' notice by the landlord to the tenant is only for the specific purpose of the ground of ejection that the premises are reasonably required by the landlord for demolition and reconstruction. The provision for this statutory
25 notice cannot in any way be connected with the determination of an existing valid contractual tenancy. The connection of this with a notice for termination of a contractual tenancy is a sheer misdirection of Law.

In view of the above, our answers to the questions posed
30 are:-

(1) As the tenancy was a statutory one, no notice was required for the determination of the pre-existing contractual tenancy which was transformed into a
35 statutory tenancy ever since the coming into operation originally of Law No. 36/75 and later of Law No. 6/80:

(2) Law No. 6/80 plainly extended the operation of

the Rent Restriction Law, 1975 (Law No. 36 of 1975) to all immovables that were completed and first let prior to 31st December, 1978, whereas Law No. 36/75, prior to such amendment, was covering only the immovables that were completed and first let before 31st December, 1974.

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In view of the above answers the appeal succeeds; the decision of the trial Court is set aside; the case is remitted back to the trial Court to proceed with the hearing.

The respondents to pay the costs of the appellants before this Court and the costs before the Rent Control Court incurred for the trial of the preliminary objection.

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Appeal allowed. Case remitted to trial Court.