1989 July 21

(SAVVIDES KOURRIS BOYADJIS JJ.)

ANASTASIOS MICHAELIDES,

Appellant-Respondent,

v.

THE ABBOT KYKKO MONASTERY NIKIFOROS FOR AND ON BEHALF OF THE HOLY MONASTERY OF KYKKO

Respondents-Applicants

(Civil Appeal No. 7372)

Rent Control — Eviction — The Rent Control Law 1983 (Law 23/83) section 11(1)(h)(iii) — Owner should prove not only that the premises are reasonably required for substantial and radical alterations, but, also, that the changes will entail the radical and total alteration of the building and aim at the development of the property — No comprehensive definition possible — The matter is one of degree

Rent Control — Evidence — Admitting in evidence copy of the notice given that the premises are reasonably required by the landlord for substantial and radical alterations, notwithstanding that notice to produce the original had not been given — As the receipt of the notice was admitted by the answer to the application and there was not a dispute that it had been received, the failure to give notice was a mere technicality, inasmuch as the Rent Control Court is not bound by the Law of Evidence

This is an appeal against an eviction order issued under section 11(1)(h)(iii) of Law 23/83. The premises in question were a house which the landlords intended to change into a restaurant and a pub at a considerable costs. The Court upheld the eviction.

Appeal dismissed. No order as to costs.

Cases referred to:

Lamarco Ltd. v. Kranos (1987) 1 C.L.R. 336,

Poyiatzis v. Pilavakis and Another (1988) 1 C.L.R. 411.

Appeal.

Appeal by respondent against the judgment of the Rent Control Court of Nicosia dated the 31st March, 1987 (Appl No E136/86) granting an order for the recovery of possession of a house at No 6 Solon Str Nicosia

G Papatheodorou, for the appellant

C Velans for the respondents

Cur adv vult

SAVVIDES J The judgment of the Court will be delivered by Mr Justice A Kourris

KOURRIS J This is an appeal against the judgment of the Rent Tribunal of Nicosia granting an order for the recovery of possession of a house situate at No 6 Solon Street, Nicosia, under the provisions of Section 11(1)(h)(iii)

The respondents are the owners of a house situate at No 6 Solon Street, Nicosia, and the appellant was the statutory tenant at a monthly rent of £15 -

On 15 5 1986 the respondents filed an application in the Rent Tribunal of Nicosia, claiming possession of the house pursuant to the provisions of Section 11(1)(h)(iii)

It is pertinent, at this stage, to set out the provisions of Section 11(1)(h)(iii) of the Rent Control Law 1983, (Law 23/83) which reads as follows -

«11(1) Ουδεμία απόφασις και ουδέν διάταγμα εκδίδεται δια την ανάκτησιν της κατοχής οιασδήποτε κατοικίας η καταστήματος, δια το οποίο ισχύει ο παρών νόμος, ή δια την εκ τούτου εξωσιν θεσμίου ενοικιαστού, πλην των ακολούθων περιπτώσεων:-

(η) Εις ην περίπτωσιν και εάν το ακίνητον απαιτείται λογικώς υπό του ιδιοκτήτου.

.....

(iii) Δια ουσιαστικάς και ριζικάς αλλαγάς συνεπαγομένας την ριζικήν και ολικήν μετατροπήν τούτου δια σκοπούς αξιοποιήσεως του».

To justify an order under Section 11(1)(h)(iii), the owner is burdened to prove not only that the premises are reasonably required for substantial and radical alterations but also, the changes must entail the radical and the total alteration of the building and must aim at the development of the property (*Lamarco Ltd. v. Kranos* (1987) 1 C.L.R. 336 and, *Poyiatzis v. Pilavakis and Another*, (1988) 1 C.L.R. 411.

We think that it is impossible to give an accurate and comprehensive definition of the alterations required to bring about the desired order under Section 11(1)(h)(iii). The question is one of degree depending of the facts of a particular case (*Poyiatzis v. Pilavakis and Another* (supra).

The respondents produced before the Rent Tribunal the architectural plans which provide for such alterations as to turn the house in question into a restaurant and pub.

Panayiotis Hadjidemetriou, a witness called by the respondents, who is a technical assistant at the architectural office of I. & A. Philippou, gave in detail the alterations proposed to be made in the house and also the cost of these alterations, which would amount to about £40,000.-.

No expert witness was called on behalf of the appellant.

The Rent Tribunal found that, on the evidence before it, the premises were reasonably required for substantial and radical alterations and that the changes would entail the radical and the total alteration of the building, which aim at the development of the property and, consequently, granted an order for recovery of possession.

The appellant's main grounds are that the Rent Tribunal went wrong in finding that the evidence was sufficient to support an order under Section 11(1)(h)(iii) and that, the Rent Tribunal was wrong to admit in evidence a copy of the letter given by the respondents to the appellant pursuant to the said Section of the Law although, the respondents failed to serve on the appellant a notice to produce the original letter under the Civil Procedure Rules.

We have gone through the evidence produced by the redpondents before the Rent Tribunal and we have been satisfied that there was overwhelming evidence before the Rent Tribunal to reach the conclusion that the premises were reasonably required for substantial and radical alterations and that, the changes entailed the radical and the total alteration of the building, which aimed at the development of the property, and consequently, this ground of appeal fails.

Now with regard to the second ground of appeal to the effect that the respondents failed to give notice to the appellant to produce the original letter. The respondents in their application to the Rent Tribunal stated therein that they addressed a letter pursuant to the Law to the appellant and the appellant in his defence admits that he received the said letter. Furthermore, there was oral evidence before the Tribunal that a notice, pursuant to the Law, has been given to the appellant. Also, it has not been disputed during the hearing and, it has not been disputed before us, that the appellant did receive the letter or, that the letter was not in accordance with the Law.

We think that, in the circumstances of this case, the failure of the respondents to give a notice to produce the original letter, under the Civil Procedure Rules, was a mere technicality inasmuch as there is provision in the Rent Control Law 1983 under Section 5 that the Tribunal is not bound by the Law of Evidence in force for the time being. We think that this technicality did not affect the case before the Rent Tribunal and it cannot affect the outcome of this appeal.

For these reasons the appeal fails but with no order for costs.

Appeal dismissed.
No order as to costs.