

1989 July 21

(SAVVIDES KOURRIS BOYADJIS, J J)

KORINA CHARALAMBOUS IACOVIDES,

*Appellant-Defendant,*

v

LOIZOS CHRISTODOULOU,

*Respondent*

*(Civil Appeal No 7322)*

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*Rent Control — Eviction — The Rent Control Law, 1983 (Law 23/83), section 11(1)(d) — Subletting premises in breach of a covenant not to sub-lease without the landlord's written consent--Sub-tenants are a family company of the statutory tenant — Rent payable under the sub-tenancy the same as that payable by the tenant — Business carried on in the premises remained the same — Eviction order refused on ground that it was not reasonable to issue it — Such decision was reasonably open to the Rent Control Court* 5

The facts of this case sufficiently appear from the hereinabove headnote In refusing to issue the eviction order the Rent Control Court should take into account all the circumstances of the case, including inter alia, whether it would be reasonable or not on the part of the landlord to refuse the tenant to sublet the premises the kind of business the sub-tenant would carry on in the premises and the rent payable the sub-tenant 15

*Appeal dismissed No order as to costs*

*Cases referred to*

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

**Appeal.** 20

Appeal by applicant against the judgment of the Rent Control Court Larnaca dated the 11th December, 1986 (Appl No E 116/84) whereby her claim for an order of recovery of possession of a shop at No 1 Kynacos Matsis Str Larnaca was dismissed.

A. Andreou, for the appellant.

G. Georghiou, for the respondent.

*Cur. adv. vult.*

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

KOURRIS J.: This is an appeal against the judgment of the Rent  
Tribunal of Lamaca by which it dismissed applicant's/appellant's  
claim for an order for the recovery of possession of a shop situate  
at No. 1 Kyriacos Matsis Street, at Lamaca, under the provisions of  
10 Section 11(1)(ζ) and Section 11(1)(d) of the Rent Control Law  
1983, (Law 23/83).

The appellant is the owner of a shop situate at No. 1 Kyriacos  
Matsis Street, at Lamaca, and the respondent is the statutory  
tenant of the said premises. The appellant filed an application in  
15 the Rent Tribunal of Lamaca claiming possession of her shop  
pursuant to the provisions of Section 11(1)(ζ) and Section 11(1)(d)  
of the Rent Control Law 1983, but the Rent Tribunal, after hearing  
the case, dismissed the appellant's claim for possession of the said  
premises.

20 During the hearing of the appeal appellant abandoned her  
ground of appeal under Section 11(1)(ζ) and the appeal  
proceeded to hearing to the effect that the Tribunal went wrong in  
dismissing the appellant's claim under Section 11(1)(d) of the Law.

It is pertinent at this stage to set out the provisions of Section  
25 11(1)(d) which reads as follows:-

«11(1). Ουδεμία απόφασις και ουδέν διάταγμα  
εκδίδεται δια την ανάκτησιν της κατοχής οιασδήποτε  
κατοικίας ή καταστήματος, δια το οποίο ισχύει ο  
παρών Νόμος, ή δια την εκ τούτου έξωσιν θέσμιου  
30 ενοικιαστού, πλην των ακολούθων περιπτώσεων .....  
.....

(δ) Εις περίπτωσιν καθ' ην ο ενοικιαστής, παρά την  
ρητήν υποχρέωσιν περί μη υπενοικιάσεως ήθελε  
παραβεί ταύτην, και το Δικαστήριο θεωρεί λογικήν  
35 την έκδοσιν τοιαύτης αποφάσεως ή τοιούτου  
διατάγματος».

The facts shortly are these. The respondent was the statutory tenant of the shop in question since 1972 and was selling electrical appliances. His son and his daughter were working in the business. The rent payable was £55.- per month. It was an express provision of the contract of lease dated 1.12.1978, which was Exhibit 1 before the Court, that the tenant was not entitled to sublet the shop without the written consent of the landlord. 5

In 1983 the tenant formed a family company with the only shareholders being the tenant himself, his wife, his son and his two daughters under the name of «Δ. Χριστοδουλίδης (Φωτιστικά και Κεραμικά) Λτδ.», which company carried on the said business. The respondent without obtaining the consent of the landlord sublet the shop to the company at the same rent. 10

The Rent Tribunal found that on the evidence before it, it was not reasonable to issue an order of ejectment against the tenant. 15

The sole issue in this appeal was whether the landlord was entitled to obtain an order of ejectment under Section 11(1)(d) of the Rent Control Law 1983, on the ground that the tenant sublet the shop without the written consent of the landlord in breach of the contract of lease entered into between them. 20

Counsel for the appellant argued that the tenant sublet to a company, which is a legal entity entirely separate from its shareholders, in breach of the contract of lease and therefore, the Rent Tribunal went wrong in deciding that it was not reasonable to issue an order of ejectment against the tenant. 25

Counsel relied mainly on the case of *Michaelides v. Gavrielides*, (1980) 1 C.L.R. 244. In that appeal the sole question was whether the landlord was entitled to obtain an order of ejectment, under Section 16(1)(g) of the Rent Control Law, 1975 (Law 36/75) which is now Section 11(1)(ζ) of the Rent Control Law 1983 (23/83), on the ground that the premises were required for the carrying on of a business by his son where, in fact, the business was to be carried on by a limited company of which the son and his wife were the two shareholders and of which they had complete control. It was held:- 30 35

«... that a company and the individual or individuals forming a company are separate legal entities, however complete the control might be by one or more of those individuals over the company; that the meaning of the words

5 in section 16(1)(g) of Law 36/75 is plain and unambiguous and that the law passed purported to protect the class of persons referred to in paragraph (g) and had nothing to do with private companies; and that once the son of the landlord and his company are entirely separate entities, and this is not a matter of form but a matter of substance and reality, the landlord or his son cannot bring themselves within the provisions of section 16(1)(g) by holding the premises through a company which the son and his wife control (principles laid down by Willmer L.J. in *Tunstall v. Steigmann* [1962] 2 All E.R. 417 at pp. 421, 422 and 423 and principles formulated in *Gramophone and Typewriter Limited v. Stanley* [1908] 2 K.B.D. 89 at page 98 adopted».

15 It should be noted that under that Section only the categories of persons expressly mentioned in Section 16(1)(g) could invoke that Section and, if they did not bring themselves within the provisions of Section 16(1)(g) now Section 11(1)(Z) the landlord could not obtain possession of the premises.

20 Under Section 11(1)(d), which is a new provision which did not exist in the provisions of the Rent Control Laws, a rent tribunal should examine whether it is reasonable to issue an order of ejectment although, the tenant, despite an express obligation not to sublet, he did sublet the premises.

25 In considering whether it is reasonable to issue an order of ejectment, the Rent Tribunal should take into account all the circumstances of the case, including inter alia, whether it would be reasonable or not on the part of the landlord to refuse the tenant to sublet the premises, the kind of business the sub-tenant would carry on in the premises and, the rent payable by the sub-tenant.

30 In the present case the Tribunal, in refusing to issue an order of ejectment, it has examined whether the landlord could refuse to give his consent for a sub-lease in extenso, and it also took into consideration that it was a limited family company with share holders the persons who carried on the business in the premises, 35 the fact that the company continued to carry on the same business as before and, in exercising its discretion refused to issue an order of ejectment stating at the same time that they would have come to a different conclusion if the shareholders were different persons from the persons who carried on the business in the shop.

It has been the complaint of counsel for the appellant that the Tribunal proceeded to examine whether the landlord could refuse his consent for a sub-lease although it was never asked from the landlord to give such a consent so that an opportunity should be given to the landlord to advance his grounds for refusal. We do not think that this argument has any substance because the landlord's application was based on Section 11(1)(d) in which case she could place all the material she wanted before the Rent Tribunal. 5

Having regard to the evidence which was before the Rent Tribunal, its conclusion, to exercise its discretion to refuse to issue an order of ejectment, was reasonably open to it and therefore, this appeal is dismissed but with no order for costs. 10

*Appeal dismissed with  
no order as to costs.*