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Guarantee for faithful execution of tenancy lease agreement does not cover statutory tenancy period



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In a recent appeal case⁽¹⁾ the Supreme Court ruled that the wording of a guarantee signed in respect of a tenancy lease agreement did not fall within the context of an explicit commitment to cover the statutory tenancy as well. Therefore, it could not be concluded that the parties intended to extend it to this form of tenancy and that the guarantor was committed to pay the rent during said period.

Facts

The appellant signed as a guarantor to cover the rent due under the lease and comply with its terms.

The appeal's subject matter was the validity of the appellant's guarantee given that the original lease agreement had expired, thereby rendering the tenancy a statutory one.

With regard to the validity of the guarantee to the statutory tenancy, the Rent Control Court held that the appellant was liable as a guarantor against the appellees for the rent due. Consequently, it issued a judgment against the appellant.

However, the appellant argued that the first-instance court had misinterpreted and wrongly applied the case law on the matter. The appellant claimed that this had resulted in the first-instance court erroneously concluding that the guarantee at issue also covered the statutory tenancy period. Therefore, its approach of extending the guarantee in order to apply it to the statutory tenancy was unjustified.

Decision

The Supreme Court reminded both parties that a guarantee is, in essence, an agreement to fulfil a third party's obligation if such party refuses or fails to fulfil it. It remains a fundamental principle of contract law that any change in the terms of a guarantee agreement which occurs without the guarantor's consent results in the release of that guarantor from any liability for subsequent transactions.

The crucial question in this appeal was whether the guarantee continued to be valid following the lease agreement's expiration – namely, during the period in which the tenancy became a statutory one.

The Supreme Court proceeded to stress that it was undeniable that the statutory tenancy was a different form of tenancy than the tenancy agreed through the signing of the lease agreement.**(2)** Therefore, a guarantee for the payment of the rent with regard to the lease agreement does not cover a subsequent statutory tenancy unless it is explicitly and clearly stated in the wording of the guarantee. Only then will the court be able to conclude that the guarantee also applies in relation to the payment of rent due under the statutory tenancy.

The Supreme Court also emphasised that a statutory tenancy is for an indefinite period. This factor is significant since it constitutes an additional and indefinite burden on any guarantor who guarantees the payment of rent. The Supreme Court clarified that the issue differs when the lease agreement itself provides for a renewal period. In such a case and, given that the guarantor was aware of the right of unilateral renewal and that the renewal had taken place, the guarantee will be deemed to apply to the renewal period.**(3)**

The Supreme Court's opinion was that the wording of the guarantee in this case did not fall within the context of an explicit commitment to cover the period of the statutory tenancy. Consequently, it could not be concluded that the parties' intention was to extend it to this form of tenancy and that the guarantor was bound to pay the rent for that period as well.

Comment

The Supreme Court's approach appears to be reasonable. It would be unreasonable to expect a guarantor to be liable for something to which they did not consent or undertake an obligation for a longer period than agreed.

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Endnotes

(1) *Mantzalos v Michaelide*, Civil Appeal 74/2013, 14 February 2019.

(2) *Michael v Nishanian* (1966), 1 CLR 150.

(3) Section 2 of the Rent Control Law 23/1983.

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