

ROYAL COURT  
(Samedi Division)

92

17th May, 1995

Before: The Deputy Bailiff and Jurats  
Orchard and Le Ruez

Attorney General

-v-

St. Aubin's Wine Bar Ltd.

1 infraction of Article 2 (1) of the Lodging Houses (Registration) (Jersey) Law, 1962, (keeping a lodging house which was not registered under the said Law).

S.C.K. Pallot, Esq., Crown Advocate  
J. Barker, Esq., on behalf of defendant Company

JUDGMENT

5 THE DEPUTY BAILIFF: St. Aubin's Wine Bar Limited appears before us today through its director and alter ego, Mr. James Barker, charged with having between 24th and 28th June, 1994, at the premises known as "Barker's" 55 Esplanade in the Parish of St. Helier, contravened Article 2 (1) of the Lodging Houses (Registration) (Jersey) Law, 1962 as amended. In the terms of the law the company, which is owned by Mr. James Barker, is charged with keeping a lodging house which is not registered under the law. The company applied for a renewal of the registration of the lodging house under the law in a printed form provided for that purpose on 1st December, 1993. The application is signed by Mrs. Elizabeth Daisy Barker, the company secretary.

15 As Mr. Pallot told us this morning, the ingredients of this offence are straight forward. The Prosecution had to prove first, that a lodging house was being kept, and a lodging house is defined in Article 1 of the law of 1962 as:

20 *"Any premises on which is conducted the business of providing lodging with or without board for reward."*

25 Secondly, that at the material time the lodging house was not a registered lodging house.

Shortly after the application was received, Mr. C.B. Mavity, a Law Enforcement Officer of the Housing Department, inspected the

premises. The inspection was carried out on 10th February and his letter of 15th February leaves little doubt that the property falls below the minimum standard required by the Housing Committee as a lodging house.

5

We were told by Mr. William Sugden, the Senior Law and Loans Officer, that when Mr. Barker took over the property it had been a lodging house but it was in an appalling condition. The Housing Committee was minded at the time not to register it. However, Mr. Barker, who is nothing if not an optimist, took up the challenge and the Department was very clear in its advice to him: they would lean over backwards to help Mr. Barker provided he brought the property up to a minimum standard.

10

The letter which was sent to Mr. Barker sets out what is described as the very minimum that must be carried out if the property is to be used as a lodging house after 28th February, 1994, when the present licence expired.

15

20

The letter of 15th February itemised 5 matters:

1. All the rooms and hallways required decorating.
2. The carpets in rooms 21, 4 and 6 had to be cleaned or if unservicable, replaced.
- 25 3. The broken glass in the stairway windows had to be replaced.
4. In accordance with what is described as the Code of Practice for Landlords and Lodgers in Registered Lodging Houses each room had to have a cooker and a fridge provided with it; and
- 30 5. Each lodging room had to display the maximum charge for that accommodation and some cards were enclosed by Mr. Mavity for that purpose.

30

35

Now, it is clear from what we heard today that matters did improve because although Mr. Barker did not see it, there is a hand-written note of Mr. Mavity dated 25th May, 1994 which includes the following:

40

*"There has been a great improvement in the general condition and once the hallways are decorated the improvement will be even more pronounced. As he is making the effort now suggest he be given a little rope, about 4 weeks worth."*

45

For reasons which were not completely clear patience ran out. On 17th June, 1994, an Act of the Housing Committee showed that matters had reached a conclusion. The Committee had decided under Article 11 of the law that it was not prepared to re-register the property and Mr. Barker attended upon the Committee to argue his case.

50

His protestations clearly fell on deaf ears because the Committee decided that as from 17th June, it would formally refuse the application to re-register and the company would be told to vacate the premises, except, of course, that Mr. Barker would be able to take five paying guests as he lived on the premises.

The Committee recalled that the Environmental Health Department held the view that all properties available for residential use in the Island should be brought up to a minimum standard, although ideally they should be maintained beyond that standard. A formal letter was sent not to the company but to Mr. Barker on 17th June, 1994. There the matter should have rested; the lodging house was to be no more; the property was still of course full of lodgers and I think it important for us to make clear that no lodger had complained to the Housing Department at any time.

On 28th June there was a dawn raid. Police Officers and members of the Housing Department arrived at the property at about 6.25 a.m. They carried out an investigation; we are certain that it was sympathetically carried out. 28 persons were still living on the premises. This was a fragrant breach of the law because once the registration was revoked there was only one possibility: that is that Mr. Barker could take five paying guests.

The case appeared to us to be open and shut but during the course of Mr. Mavity's evidence the fact was disclosed that the property has now been re-registered as a lodging house, and that while Mr. Barker's company was clearly in breach of the law, negotiations were continuing with the Housing Department. The Crown was only advised of the breach at the end of September, 1994, and the case came to court in March.

Apparently, nothing material has changed since the licence was revoked. There are still no cookers, the cracked sinks are still *in situ*. Indeed, on 20th July, 1994, a few days after the licence was revoked Mr. Barker was offered an opportunity to agree that if he would accept that the property be registered for 20 persons instead of the 27 he wanted, the Committee would then and there have re-registered the lodging house.

We find all this very disturbing. If Mr. Barker or his company had agreed to 20 lodgers he would have been in breach of the law for barely 4 weeks and the position and condition of the property would have changed not one material jot. In those circumstances, and because of those facts, we have stopped the trial at a convenient place and we give the company, in the circumstances, an absolute discharge. However, I do want to say this: this is not to encourage the company to break the law. Conditions have been re-imposed again. If Mr. Barker fails to meet those perfectly legitimate requirements then the Committee will be able to follow its legal remedies. It is hoped that each side had learned something from this exercise.

In the circumstances, Mr. Pallot, we are not going award

costs and we therefore make no order as to costs.

**No Authorities**