7 pages.

COURT OF APPEAL

16th January, 1997. 5

Before: Sir Godfray Le Quesne, Q.C., (President),
Sir Peter Crill, K.B.E., and
M.G. Clarke, Esq., Q.C.

St. Aubin's Wine Bar, Limited

- v -

The Attorney General

I. APPLICATION for an extension of time within which to apply for leave to appeal and for leave to appeal against conviction and an absolute discharge granted to the Appellant by the Inferior Number of the Royal Court, (*en police correctionnelle*), on 17 May, 1995, following a denial of the facts, which was later withdrawn and an admission substituted by the Appellant on:

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

II. APPLICATION for leave to appeal (1) against conviction before the Inferior Number of the Royal Court, (*en police correctionnelle*), on 25th July, 1996; and (2) against a fine of £5,000, with £1,000 costs imposed on 25th July, 1996, following a not guilty plea to:

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

Leave to appeal against conviction and sentence was refused by the Bailiff on 28th August, 1996.

III. APPLICATION for an extension of time within which to apply for leave to appeal and for leave to appeal (1) against conviction before the Inferior Number of the Royal Court, (*en police correctionnelle*), on 18th October, 1996; and (2) against a fine of £6,000, with £1,000 costs imposed on 18th October, 1996, following a not guilty plea to:

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

Mr. J. Barker, a Director of the Company, for the Appellant.
The Solicitor General.

JUDGMENT

CLARKE JA: In this case the Court heard three applications by the St. Aubin's Wine Bar Limited.

The first, having regard to the chronology of events, was for an extension of time within which to apply for leave to appeal and for leave to appeal against conviction and an absolute discharge granted to the appellant by the Inferior Number of the Royal Court in respect of one count of contravening Article 2(1) of the Lodging Houses (Registration) (Jersey) (Law), 1962, as amended.

The second application was for leave to appeal (1) against conviction before the Inferior Number of the Royal Court on 25th July, 1996, and (2) against a fine of £5,000, with £1,000 costs imposed on 25th July, 1996, following a not guilty plea to: one count of contravening Article 2(1) of the Lodging Houses (Registration) (Jersey) Law, 1962, as amended, by keeping a lodging house which was not registered under the said Law. In this case leave to appeal against conviction and sentence was refused by the Bailiff on 28th August, 1996.

The third application was for an extension of time within which to apply for leave to appeal and for leave to appeal (1) against conviction before the Inferior Number of the Royal Court on 18th October, 1996, and (2) against a fine of £6,000 with £1,000 costs imposed on 18th October, following a not guilty plea to: one count of contravening Article 2(1) of the Lodging Houses (Registration) (Jersey) Law, 1962, as amended, by keeping a lodging house which was not registered under the said Law.

We should say, at the outset, that in respect of all three convictions, the position accepted before us by Mr. J. Barker, a director of the appellants and who appeared on their behalf, was that it was admitted that, at the material times to which each of the charges related the appellants, were keeping a lodging house at 55 The Esplanade, St. Helier, which was not registered as required under Article 2(1) of the Lodging Houses (Registration) (Jersey) Law, 1962, as amended. Their complaint was that, while the lodging house in question was not registered, registration having been withdrawn by the Housing Committee, it nevertheless ought to have been registered and the Committee were acting unfairly or unreasonably in not so deciding in respect of the periods to which the convictions related.

As was very clearly pointed out to the appellants by letter dated 19th April, 1996, from Mr. W.H. Sugden, on behalf of the Committee, the appellants' remedy in respect of any alleged unreasonableness on the part of the registering authority in refusing to consent to re-register the lodging house, is to be found in Article 12(3) of the Lodging Houses (Registration) (Jersey) Law, 1962, which provides that ***"any person aggrieved by such a refusal or the conditions attached to the registration of a lodging house may apply to the Inferior Number of the Royal Court, either in term or in vacation, on the ground that the decision of the Committee was unreasonable having regard to all the circumstances of the case".*** Mr. Sugden went on to say *"If you decide to appeal to the Inferior Number, you will of course be entitled to all papers and Committee Acts concerning the lodging house at 55 The Esplanade, St. Helier".* At no time, in the face of the refusals by the

Committee to re-register the lodging house, have the appellants sought to appeal in terms of Article 12(3) against those refusals. It appears clear to the Court, therefore, that, standing the admission of Mr. Barker, on behalf of the appellants, that during all the material times the boarding house was not registered, as required by law, the appellants had no defence to the substance of the charges to which the present applications relate.

Against that background we turn to consider the applications in turn. The Act of Court dated 17th May, 1995, states, *inter alia*, that *"The said witnesses were heard on oath. Whereupon the defendant company withdrew the denial of the facts alleged in the action and admitted the facts alleged therein. Whereupon, upon hearing Crown Advocate Steven Charles Kilvington Pallot and the defendant company through the intermediary of James Barker, a director, the Court granted the defendant company an absolute discharge".*

When the two later charges of 1996 were considered, that Act of Court was treated as amounting to a conviction of the charge brought under Article 2(1) of the 1962 Law.

Mr. Barker, for the appellants, maintained before us that he never withdrew his plea of not guilty before the Royal Court at any stage during the hearing in May, 1995. In his judgment, the learned Deputy Bailiff reached the conclusion that, with effect from 17th June, 1994, the appellants' lodging house was not registered. He then continued, however:

> *"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 flagrant 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.*
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> *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.*
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> *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.*
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> *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".

It is quite apparent to this Court that the view of the Royal Court was that, in the light of the circumstances set out by the learned Deputy Bailiff, in the passage just quoted, the prosecution should never have been brought. Having considered the transcript of evidence given at the trial and, in particular, those passages leading up to where the trial came to an end, we can well understand how the Court came to dispose of matters in the way they did. We are not, however, satisfied that it was technically correct to proceed on the basis that the appellants had withdrawn their not guilty plea and until that was, in fact, clearly and unambiguously done and formally recorded, it seems to us it was technically inappropriate to proceed on the basis that the appellants' plea had been changed. Nevertheless, having regard to the fact that, in our view, the appellants were in breach of the law in respect of which they were charged, we are not prepared in the exercise of our discretion, at this very late stage, to extend the time for applying for leave to appeal. We will, however, return in due course, to take into account the subsequent effect of a conviction being recorded against the appellants in the circumstances just described.

With regard to the conviction contained in the judgment and act of Court of 25th July, 1996, the background to this was that the Housing Committee, on 15th March, 1996, had decided that the lodging house could not be registered for two specific reasons. The first was that a partition on the ground floor, which separated the lodging accommodation from the public bars which formed part of the premises, had been removed. That meant that the toilets which should have been provided for the exclusive use of the lodgers were now available for use by persons who used the public bar facilities. The second reason for the refusal was that there were no cooking facilities in the registered rooms.

As previously observed, it was accepted, on behalf of the appellants that despite that refusal to re-register, the appellants continued to operate the lodging house during April, 1996, when it was not registered and it was in respect of that activity that the appellants were convicted on 25th July, 1996. We see no reason, in these circumstances, for allowing leave to appeal against that conviction.

The appellants were fined £5,000 and found liable for £1,000 costs. The judgment and Act of Court of 25th July, 1996, refers to a previous conviction under Article 2(1) of the 1962 Law. It is undisputed that that was a reference to the conviction of 17th May, 1995. The 1962 Law, as amended, fixes no limit to the fine that may be imposed in respect of an offence involving a breach of Article 2(1) of the Law. We consider, however, that the Royal Court in fixing the fine on 25th July, 1996, must have proceeded on the basis that this was a second offence. As we agree with the Royal Court's attitude in the 1995 case that that prosecution, in the circumstances, should never have been brought, we consider it appropriate to allow the appellant to appeal against the sentence imposed on 25th July, 1996.

The appellants' position with regard to the October, 1996, conviction was, insofar as we understood it, that after an approach had been made to a local politician, Senator Le Main, concerning the appellants' dissatisfaction with the Housing Committee's treatment of their application for re-registration, they were led to believe by the Senator that it would be in order for them to continue operating the lodging house though it was unregistered.

The appellants' Mr. Barker also drew our attention to the fact that in August, 1996, they had placed orders for micro-wave ovens to be installed in the rooms but they accepted that the partition had not been reinstalled in the position required by the Housing Committee. On 9th August, 1996, Mr. P. Connew, on behalf of the Housing Committee, wrote to the appellants in the following terms:

> *"The Committee has, however, asked me to remind you that until such time as the premises are registered in accordance with the provisions of the Lodging Houses (Registration) (Jersey) Law, 1962, the company will be breaking the law if it provides accommodation for reward at the premises for in excess of five people. The Committee has reiterated that should the company continue to operate the premises in any manner that contravenes the aforementioned law, then the Committee will have no option but to take further action against the company".*

Notwithstanding those clear and unambiguous terms and the fact of their conviction on 25th July, 1996, the appellants continued to operate the lodging house, as before, though unregistered. In our view that was a flagrant breach of the 1962 Law and can, in no sense, be excused by whatever impression the Senator may or may not have left in the mind of the appellants. We have no hesitation in refusing the application for leave to appeal against the 11th October, 1996, conviction out of time.

We are, however, prepared to grant the application for leave for an extension of time to apply for leave to appeal against sentence and to grant the application for leave to appeal against sentence.

We should finally add, for the sake of completeness, that the appellants had originally made an application to present new evidence in relation to the July, 1996, proceedings but, in the event, this application was withdrawn by Mr. Barker, on behalf of the appellants.

After hearing what you have to say about sentence, Mr. Barker, we consider that in respect of the sentence which was imposed on 25th July, 1996, that having regard to the fact that it would have been more appropriate to approach the fixing of that fine in relation to the July, 1996, conviction as if it were a first offence, the level of fine should be reduced to £3,000. We, however, see no reason for reducing the amount of costs awarded.

In the Act of the Court of 18th October, 1996, it is stated that the appellants had two previous convictions under the Lodging Houses Law. For the same reasons which we gave in relation to the level of fine imposed in respect of the July, 1996, conviction, we consider it appropriate that the fine of £6,000 should be reduced to take into account the special circumstances in which the first conviction was

recorded. We will reduce the fine to £5,000 but, again, we will not disturb the amount of costs awarded.

THE PRESIDENT: Now, Mr. Barker, there are two matters remaining. You told us that you would want time fixed for the payment of the fine and that you wanted to appeal. As regards time, we have considered that. We will allow the company up to 28th February for payment of the fine.

As regards leave to appeal, we have no power to grant you leave to appeal against our judgment. The only thing you can do now - I am not advising you to do it, I am only telling you what is possible - is to present a petition to the Judicial Committee of the Privy Council and ask them for leave to appeal. If you can present your petition by 28th February, you can then ask the Privy Council if they will extend the time for payment.

Authorities

Foster-v-A.G. (1990) JLR N.15. CofA.

Blackstone's Criminal Practice (1995): D.9.23: Ambiguous pleas: p.1213.

AG -v- St. Aubin's Wine Bar, Limited (17th May, 1995) Jersey Unreported.