

Joseph Zammit Bonett and Others - - - - - Appellants

v.

Joseph Axisa and Others - - - - - Respondents

FROM

THE COURT OF APPEAL, MALTA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 9TH OCTOBER, 1950

Present at the Hearing :

LORD SIMONDS
LORD OAKSEY
SIR JOHN BEAUMONT
THE CHIEF JUSTICE OF CANADA
(THE RIGHT HON. T. RINFRET)
SIR LIONEL LEACH

[*Delivered by* SIR LIONEL LEACH]

This is an appeal from a judgment of the Court of Appeal of Malta, dated the 29th November, 1948, which affirmed a judgment of His Majesty's Commercial Court of Malta, delivered on the 4th May, 1948. The question involved is whether the Commercial Court had jurisdiction in the matter brought before it or whether it lay with a tribunal constituted by an ordinance promulgated to regulate the reletting of urban immovable property in the island.

By a writ of summons issued in the Commercial Court on the 3rd May, 1947, the respondents, as owners of the "Axisa" cinema, situate at No. 5, Tower Road, Sliema, Malta, called upon the appellants, who had been let into possession of the cinema under a lease, to show cause why an order should not be made directing them to vacate and surrender the premises, together with the benches, projectors and other equipment. The period covered by the lease had expired. The appellants challenged the jurisdiction of the Commercial Court to try the suit. They maintained that by reason of Malta Ordinance No. XXI of 1931, the Rent Regulation Board, a tribunal set up thereunder, alone had jurisdiction in the matter. The title of the Ordinance is the Urban Property (Regulation) Ordinance, but for the sake of brevity it will be referred to hereinafter as "the Ordinance". The Commercial Court dismissed the appellants' plea of incompetence on the ground that leases of business concerns were not within the purview of the Ordinance and the lease here was a lease of a business concern. Consequently the Commercial Court granted the respondents a decree for the eviction of the appellants, with costs. In confirming the judgment of the trial Court, the Court of Appeal pointed out that it was in conformity with the view which it had repeatedly upheld.

The respondents based their action on two leases, dated the 29th July, 1930, and the 2nd July, 1934, respectively, and it will be convenient to examine the provisions contained in these documents before turning to

the requirements of the Ordinance. By the earlier deed predecessors in title of the respondents leased the cinema to Alfredo Zammit (now deceased and represented by some of the appellants) for a term of two years, with an option of renewal for a further two years, at a rent of £185 per annum. The lease provided that all improvements made should "be left to the benefit of the property without any right on the part of the tenant to any compensation therefor". The premises had previously been used as a cinema and the tenant undertook not to suspend cinematographic and other shows (except on good and sufficient grounds) in order not to impair the goodwill which attached to the cinema. On the 11th October, 1930, an inventory was made of the furniture and equipment which the tenant was entitled to use. When this lease was entered into only silent films were shown, but at some date before the second lease was signed the cinema was refurnished and converted into a "talkie" at the expense of the appellants, who obtained a licence to sell wines and spirits on the premises and secured a new entertainments licence.

A dispute arose between the lessors and the lessee with regard to the interpretation of some of the terms of the lease and more particularly with regard to the question on whom should fall the cost of widening the door of the cinema, a requirement on which the Superintendent of Public Works was insisting. This led to a suit in the Commercial Court (No. 121 of 1931) and to an appeal to the Court of Appeal. Pending the hearing of the appeal a compromise was entered into, and effect to it was given in the lease of the 2nd July, 1934, which was executed in favour of Alfredo Zammit and four other persons. The period was for six years from the 1st August, 1934, at a rental of £195 per annum with the option of a further term of six years at the same figure. As in the earlier lease improvements were to inure to the benefit of the lessors without any right in the lessees to compensation. The lessees bound themselves not to suspend cinematographic shows and other performances, except during the months of July, August and September, or on good and sufficient grounds. Again it was made clear that this provision was inserted in order to preserve to the lessors the goodwill of the cinema. By another clause the lessees bound themselves to change the name of the cinema into another name approved of by the lessors and to do so within one month from the 1st August, 1934.

The appellants exercised the option to continue their tenancy for the further term of six years. This expired on the 31st July, 1946, and on the 26th March, 1947, the respondents called upon them to surrender and hand over the premises on the 30th April, 1947. The demand was ignored and consequently the suit was instituted.

As originally promulgated the Ordinance contained a provision that it should continue in force until the 31st December, 1933, but its operation has been extended by subsequent Ordinances and it was in force at all times material to the suit.

Section 2 defines the expression "premises" as meaning "any urban immovable property" and it follows from this that the Ordinance only applies to immovable property. The section defines the expression "shop" as meaning

"any premises principally leased for the sale of any wares or merchandise, whether by wholesale or retail, any market stall, warehouse and any premises licensed for the sale of wine and spirits or refreshments, any cinema hall or other premises principally leased for the exercise therein of any art or trade."

Section 4 declares that it shall not be lawful for the lessor at the expiration of the period of tenancy to refuse the renewal of the lease or to raise the rent or impose new conditions for the renewal of the lease without the permission of the Board. Where the lessor desires to resume

possession of the premises at the termination of the lease section 9 requires him to apply to the Board for permission to do so and section 10 sets out the cases in which an application for resumption of possession may be granted. Section 10 contains two clauses (a) and (b), but it is only necessary to refer to clause (a). By virtue of that clause the Board can grant the permission sought if the tenant has failed to pay the rent punctually, or has caused considerable damage to the premises, or otherwise failed to comply with the conditions of the lease, or has used the premises for a purpose other than that for which they were leased, or has sublet them or made over the lease without the express consent of the lessor.

Section 13 provides that where the premises consist in a shop the lessor shall not be entitled to resume possession during the time in which the Ordinance shall be in force, except in the cases mentioned in paragraph (a) of section 10 or where the premises belong to or are administered by the Government or are otherwise required by the Government for a public purpose.

The Court of Appeal held that the ordinary courts retained their jurisdiction because the lease included the goodwill, equipment and accessories of the hall. It was observed that by no stretch of imagination could it be said that premises which had for so long been known as a cinema and had been turned into a "talkie" enjoyed no goodwill. The court also held that the fact that a bar had been installed had not turned the premises into a "shop" within the meaning of the Ordinance.

Their Lordships consider that the judgments of the Maltese courts are right. Section 2 of the Ordinance confines the definition of "premises" to urban immoveable property. Therefore moveable property is outside the purview of the Ordinance. The definition of "shop" includes a cinema hall, but as the Ordinance only applies to immoveable property it would not be reasonable to bring within its scope a hall to which is attached the goodwill of an established cinema business and which is furnished and equipped for the carrying on of that business. If the legislative authority had intended a lease such as the one under discussion to fall within the mischief of section 13 it is difficult to imagine more inappropriate language than that used in the definition section. But the course of events leaves no doubt that it never had any such intention. With the background of repeated declarations of the Court of Appeal that the Ordinance does not apply to leases of business concerns, its operation has been extended on numerous occasions, but no step has been taken to introduce an amendment which would have had the effect of overriding the judgments of the Court of Appeal. As the Ordinance stands in this respect as it stood in 1931, in spite of suitable opportunities for amendment, the only reasonable conclusion is that the Court of Appeal interpreted it in accordance with the intention of the legislature. It may be added that in the course of the arguments their Lordships were informed that until the passing of Ordinance No. XVI of 1944 similar restrictive legislation in respect of dwelling houses did not apply to furnished premises.

For these reasons their Lordships will humbly advise His Majesty that the appeal should be dismissed. The appellants will bear the costs of the appeal.

In the Privy Council

JOSEPH ZAMMIT BONETT AND OTHERS

v.

JOSEPH AXISA AND OTHERS

DELIVERED BY SIR LIONEL LEACH

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