Privy Council Appeal No. 37 *of* 1958

Wilfred Isaac – – – – – – – – – – *Appellant*

v.

Hotel de Paris Limited – – – – – – – – *Respondent*

FROM

THE FEDERAL SUPREME COURT, TRINIDAD

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 16TH DECEMBER, 1959

Present at the Hearing:
LORD DENNING
LORD BIRKETT
MR. L. M. D. DE SILVA

[*Delivered by* LORD DENNING]

In the City of the Port of Spain in the Island of Trinidad there is an hotel called the Hotel de Paris. It is situate at No. 7 Abercrombie Street and it is owned by the plaintiff company Hotel de Paris Limited. On the other side of the street at No. 10 Abercrombie Street there is a building which is owned by Mr. Manoel Fernandez. He let the ground floor of it to a bank. But he let the two floors above it on a lease to the plaintiff company at a rent of $250 a month. The plaintiff company used these two floors for sometime as bedrooms in connection with their hotel. They called it the Parisian Hotel. In or about December, 1955, the plaintiff company let the defendant Isaac into occupation of the Parisian Hotel, or part of it, and they now seek to get him out. The Supreme Court of Trinidad and Tobago (Clement Phillips, J.) made an order for possession against the defendant. The Federal Supreme Court (Hallinan, C.J., Rennie, J., Archer, J.) affirmed the decision. The defendant now appeals to Her Majesty in Council.

The contest before their Lordships turned mainly on what was the correct legal relationship between the plaintiff company and the defendant. Was the defendant a tenant? or was he in the premises merely under a licence to be there? Had his interest, whatever it was, been validly determined? And if it had been determined by a proper notice, had it been revived by subsequent acceptance of rent?

All these issues will not become clear until their Lordships have stated the facts. The plaintiff company has an issued capital of 64 shares. In September, 1955, a Mr. Attie Saffie Joseph bought all these 64 shares and thus gained control of the company. He was acquainted with the defendant Isaac and agreed to sell him 15 of these shares (roughly a quarter interest in the company) for $4,687.50. The agreement was put into writing dated 1st October, 1955. Under it the defendant was to pay a deposit of $1,000 down and the balance by six monthly instalments of $614.59 each. It contained a provision that, if the defendant made default, he was to forfeit his deposit of $1,000 together with any further instalments not exceeding $2,000 in all.

The defendant duly paid the $1,000 and he also paid near enough the first two monthly instalments due on 1st November and 1st December, 1955. So it looked at this time as if he would acquire a fair stake in the company. He had had some experience in the hotel trade and he helped with the running of the Hotel de Paris. Then he suggested that repairs should be done to the Parisian Hotel on the other side of the road, that a night bar should be established in the Parisian Hotel and that he should be put in charge of it on behalf of the plaintiff company. Mr. Joseph agreed.

Accordingly about December, 1955, the plaintiff company let the defendant into occupation of the first floor of the Parisian Hotel. The defendant got a licence to use it as a night bar. He took the licence in his own name and put in a stock of liquor at his own expense. He put up a signboard with the words " Wilfrid Isaac and Hotel de Paris Annexe—Night Bar ". This looked as if the defendant was proposing to operate it on his own account. Mr. Joseph remonstrated. The defendant thereupon promised to account to the company for his expenditure and receipts from the night bar: and he did so account. The position at this time, as the trial Judge found, was that the defendant was installed at the Parisian Hotel for the purpose of managing a night bar on the company's behalf.

In February, 1956, the relations between Mr. Joseph and the defendant Isaac became strained : and on 17th February, 1956, the two men with their lawyers met to try and settle their differences. At this meeting the parties agreed upon terms which were afterwards to be embodied in a written contract between them. Their Lordships are of opinion that no concluded contract was reached at the meeting. Everything was subject to a contract later being signed. A draft contract was prepared by Mr. Joseph's lawyer but it was not approved by the defendant's lawyer. So it never materialised.

Nevertheless, although no concluded contract was reached, some of the terms of the proposed contract were acted upon: and their Lordships must draw attention to them. They accept for this purpose the findings of the trial Judge. The first term was an important term which was never implemented:

> " (*a*) The defendant was to pay the balance due for the purchase of the shares ".

But the next three terms were acted upon. They were these:

> " (*b*) The defendant was to remain in occupation of the first floor of the Parisian Hotel where the night bar was being operated.
>
> (*c*) The defendant agreed to pay all expenses incurred in connection with the running of the Parisian Hotel, *including the monthly rent of* $250 *which the plaintiff company paid its landlord, Mr. Manoel Fernandez.*" (These words were under-lined by the trial Judge.)
>
> " (*d*) The defendant would retain for himself all profits he made from the business carried on at the Parisian Hotel, in lieu of the dividends on his shares if he acquired them."

It was no doubt anticipated by both parties that a contract would be drawn up and that the defendant would then pay the balance due on the shares. Meanwhile the defendant remained in occupation and acted just as if a contract had been concluded. He ran the night bar. He paid all expenses. He took all the profits. And he paid $250 a month to the plaintiff company. It was expressly paid as " rent ". For instance, on 3rd April, 1956, the defendant sent " the sum of $250.00 being the rent to 1st April, 1956, for Parisian Hotel ". No receipt or acknowledgment was ever given but it was undoubtedly accepted by the plaintiff company.

Towards the end of April 1956, however, seeing that no contract had been executed and the balance due on the shares had not been paid, Mr. Joseph gave notice to the defendant that he intended to forfeit the

sums of money already paid for the shares. And by a letter dated 7th or 8th May, 1956, he wrote to the defendant :—

> " Re Agreement for purchase of shares in Hotel de Paris Limited.
>
> I have to refer to previous correspondence passing between us on the above-mentioned subject and to inform you that your deposits made under the above agreement have been forfeited. You are required to remove and take away such stock and other materials as you have at the Parisian Hotel within 7 days of the date hereof, and I am to warn you that if you fail to do so I shall be obliged to take such steps as may be necessary to have them removed therefrom ".

(A question was raised before their Lordships whether this letter was ever properly proved. Mr. Joseph said he served it on the defendant. He kept a copy of it. The original should have been in the possession of the defendant. But no notice to produce had been given. This might have raised a nice point, but for the fact that the copy formed one of a bundle of agreed documents which were tendered and admitted into evidence without objection. That is enough to overcome the want of notice to produce.)

Notwithstanding that notice, the defendant did not remove his stock or other materials. But the plaintiff company took no steps to have them removed. Everything went on as before. The defendant remained in occupation, paying the expenses and taking the profits. And he paid $250 a month to the plaintiff company. These were expressly paid as " rent due at Parisian Hotel ". The plaintiff company accepted the payments but gave no receipts.

On the 19th October, 1956, the plaintiff company issued a writ asking for a declaration that they were entitled to possession of the Parisian Hotel and an Order for Possession. The defendant in his defence claimed that he was a tenant at a monthly rent of $250.00. Even after the issue of the writ, everything went on as before. The defendant remained in occupation and paid $250 a month to the plaintiff company. These were expressly paid as " rent for the Parisian Hotel ", but no receipts were given.

On the 6th December, 1957, the Supreme Court of Trinidad made an order for possession but still the defendant stayed on. On the 27th May, 1957, the Federal Supreme Court affirmed the order but still he stayed on. The order has not yet been executed. Their Lordships were told that the defendant is still there awaiting the outcome of this appeal.

At the trial the defendant alleged that in December 1955 there was an oral agreement whereby Mr. Joseph, on behalf of the plaintiff company, sub-let both floors of the Parisian Hotel to the defendant at a rent of $250.00. The Judge rejected the evidence of the defendant and his witness on this point. He held that originally the defendant was put into occupation of the first floor for the purpose of establishing and managing a night bar on behalf of the company. In other words, as a servant or agent on behalf of the company, with no right or interest of his own. The Federal Supreme Court upheld this finding and their Lordships think it clearly right.

But what was the position after 17th February, 1956? It was submitted by Mr. Dingle Foot that there were all the *indicia* of a monthly tenancy. There was not only exclusive possession but there was also the payment and acceptance of rent. (Furthermore, the defendant paid the disbursements, and so forth.) Mr. Dingle Foot admitted that these would not be decisive to establish the tenancy in the case of premises within the Rent Restriction Acts such as *Marcroft Wagons Ld.* v. *Smith* [1951] 2 K.B. 496 and *Murray Bull & Co. Ld.* v. *Murray* [1953] 1 Q.B. 211, but it was altogether different, he said, in the present case where the premises were not subject to Rent Restriction Legislation. The only proper inference here was a monthly tenancy. Their Lordships cannot accept this view. There are many cases in the books where exclusive possession has been given of premises outside the Rent Restriction Acts and yet there has been held to be no tenancy. Instances are *Errington* v.

Errington [1952] 1 K.B. 290 and *Cobb* v. *Lane* [1952] 1 T.L.R. 1037 which were referred to during the argument. It is true that in those two cases there was no payment or acceptance of rent, but even payment and acceptance of rent—though of great weight—is not decisive of a tenancy where it can be otherwise explained, see *Clarke* v. *Grant* [1950] 1 K.B. 104. As Lord Greene, M.R. said in *Booker* v. *Palmer* [1942] 2 A.E.R. 675 at p. 677: "There is one golden rule which is of very general application, namely, that the law does not impute intention to enter into legal relationships where the circumstances and the conduct of the parties negative any intention of the kind ".

It appears to their Lordships that the law on this matter was correctly interpreted and applied by Archer, J. in the Federal Supreme Court when he said:

> " It is clear from the authorities that the intention of the parties is the paramount consideration and while the fact of exclusive possession together with the payment of rent is of the first importance, the circumstances in which exclusive possession has been given and the character in which money paid as rent has been received are also matters to be considered. The circumstances in which Isaac was allowed to occupy the Parisian Hotel show that Joseph never intended to accept him as a tenant and that he was fully aware of it. The payments he made were only part of the disbursements for which he made himself responsible and the so-called rent was in the nature of a reimbursement of the rent payable by the plaintiff."

Their Lordships are therefore of opinion that the relationship between the parties after 17th February, 1956, was not that of landlord and tenant, but that of licensor and licensee. The circumstances and conduct of the parties show that all that was intended was that the defendant should have a personal privilege of running a night bar on the premises, with no interest in the land at all. It was at first only a privilege to be there pending the execution of a formal contract. Later when the contract fell through, and notice was given to him to remove his belongings, even that privilege came to an end. The notice of 7th or 8th May, 1956, would not, of course, have been sufficient to end a tenancy but it was quite sufficient to end a licence, see *Ministry of Health* v. *Bellotti* [1944] K.B. 298.

But what about the position after 15th May, 1956, when the notice expired? The defendant remained in possession carrying on as before. He was still permitted to be there both before and after the issue of the writ. He was in a sense still a licensee. But he was not, in the opinion of their Lordships, in such a privileged position that he could demand or expect yet another notice before being turned out. He was there at sufferance liable to be turned out whenever the plaintiff company thought fit to execute its right to do so: just as in the old days a tenant by sufferance was. And during this period it should not be taken against the company that it accepted his monthly payments of so-called rent. Better to have something in hand than lose all in the long-drawn course of court proceedings. True it is that, a year after the issue of the writ, on 23rd October, 1957, when giving evidence on an application by the defendant for a licence, Mr. Joseph said: "Hotel de Paris are sub-letting to Isaac. Isaac pays $250 a month rent. He is not in default ". But it must be remembered that a layman may in cases of this kind easily put the wrong label on to a legal relationship. Mr. Joseph put it better later in his evidence on that occasion when he said: " I do not know how long the case will last so I must cash his cheques ". The acceptance of the payments did not in these circumstances evince any intention to waive the company's right to immediate possession.

Their Lordships find themselves in full agreement with the Supreme Court of Trinidad and the Federal Supreme Court. They will humbly advise Her Majesty that this appeal should be dismissed. The appellant must pay the costs.

(39992) Wt. 8078—37 100 1/60 D.L.

In the Privy Council

WILFRED ISAAC

v.

HOTEL DE PARIS LIMITED

DELIVERED BY LORD DENNING

Printed by HER MAJESTY'S STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.

1960