

Translation

HER MAJESTY'S COURT OF APPEAL

Emma Gollcher, a widow

v

Walter Baldacchino et

The Note of the undersigned Judge

Whereby he declares as follows:

In general and with respect he cannot agree with the conclusion arrived at by His Honourable colleagues of the Court of Appeal and he agrees instead with the conclusion arrived at by the Rent Regulation Board in the decision appealed from.

In particular and briefly he adds the following remarks.

The clause in question in the original contract of lease has to be considered not only within the framework of the general law but also and particularly within the framework of the special rent law which applies to the case and within such framework it has to be considered as it is. The said law (Chapter 109), which was already in force when the original lease agreement was entered into and which set up a system of control in matters of lease, provides that it shall not be lawful for the lessor of any premises at the expiration of the period of tenancy to refuse the renewal of the lease of the premises without the permission of the Rent Regulation Board (Section 4) and when he desires to resume possession of the premises at the termination of the original period of lease or of the lease renewed in force of the law from time to time, he shall apply (as was done in this case) to the Board for permission to do so

(section/.....)

(section 9) and the Board shall grant such permission only in certain hypotheses limited by law including that when the lessee - and the following are the textual words of the law - "has sublet the premises or made over the lease without the express consent of the lessor" (section 10).

Under this system where, notwithstanding the effective termination of the agreed lease, the lessor may not - and this for an indefinite time - resume possession of his premises except in certain limited hypotheses expressly specified by the law, the right was reserved to the lessor to resume such possession if the lessee sublets the premises or makes over the lease without his express consent. The lessor in the present case preventively and expressly renounced in the original lease agreement his right to resume such possession if the lessees sublet the premises (which the lessees in fact had already done some time ago without the lessor being able to take any steps).

There is no doubt that subletting is, as a juridical figure, different from assignment of lease and is also in fact separately envisaged by the special rent law as a ground whereon the lessor may base a claim for the resumption of possession of the premises (and this is the demand in the present case, made under the said law) and, in the absence of clear evidence in this regard, there is nothing to authorise the presumption that the preventive express and specific renunciation by the lessor of his right to resume possession of the premises in the case of a subletting had extended itself also to the case of an assignment of the lease.

/Although.....

Although the special rent law gives the lessor the right to resume possession of the premises in the event of a subletting or of an assignment of the lease, in the public deed in question, a solemn act received by a Notary Public, the lessor's renunciation to such right was in the formulation of the said deed expressly limited to subletting without any mention of assignment of the lease, and no evidence has been produced to show as a fact that, notwithstanding such formulation, the parties were intending that the lessor's renunciation in fact had to extend also to that which was not only not expressed but which also in the particular context (since the special law mentions both subletting and assignment) one would, if anything, have reasonably expected that it would be expressed if it had been intended. Nor, as has been stated, can such renunciation be lawfully presumed. It has many times and with good reason been stated by these Courts that renunciations of rights must not be presumed and are to be interpreted strictly.

In the present case the lessees, after having sublet the premises (vide clause 2 of the deed at page 8 of the record^{*}) as they were certainly entitled to do, also assigned the lease, which in the opinion of the undersigned judge they had no right to do under the lease agreement, and once they have done so, the lessor's right to which he has not renounced, and which the law reserves to him by reason of such assignment, is still in force and operative so that his demand should, in the opinion of the undersigned

/Judge.....

* Registrar's Note: Now page 8 of applicant's Exhibits in the printed record.

Judge, be allowed as it was allowed by the Board.

(Signed) J.J. Cremona,
Vice President

This 2nd day of July, 1971.

Filed by the Hon. Mr. Justice J.J. Cremona,
Acting Chief Justice and President of the Court.

(Signed) G. Izzi Savona
Dep. Registrar

