1980/83

IN THE ROYAL COURT OF THE ISLAND OF JERSEY.

B. G. ROMERIL & COMPANY LIMITED PLAINTIFF

- v -

ANDRE LOYER DEFENDANT

Advocate Charles Malcolm Belford Thacker for the plaintiff
Advocate Susan Ann Pearmain for the defendant.

In this case the plaintiff company is the owner of premises at 36 Great Union Road, which it purchased in 1972 and in accordance with the requirements imposed on it by the Housing Committee it was required to have those premises, which consist of three flats, occupied by persons who were exempt from the Housing Regulations and had been given consent to occupy the premises. Be that as it may, the company in furtherance of its policy in assisting its employees to be housed, decided that when the third flat, that is the top flat, was vacant in those premises, that the defendant, Mr. André Loyer, who had been employed by the company for some time, could be the occupier. The company has been allowed through its director, Mr. Syvret, to give us evidence as to the intention that it entertained at the time it entered into an agreement with Mr. Loyer. We allowed this because on the document which we had produced to us and which we were told is the same type of document used in respect of all the company's employees where they occupy company's properties, there is an inconsistency inasmuch as although it is headed "Service Agreement relating to the top flat 36 Great Union Road, St. Helier, from the 1st April, 1974," it could be argued that certainly the first paragraph of the agreement would be more consistent with a tenancy agreement. Therefore we allowed extrinsic evidence to be introduced to show the true nature of the agreement which had been entered into.

We think that the law as cited to us by Mrs. Pearmain for the defendant is right and we propose to follow it. That is to say, as was said in Addiscome Garden Estates -v- Crabbe, (1957) 3 A.E.R. 563, it is a matter of ascertaining the true relationship of the parties. On page 569 of the judgment Jenkins L.J. refers to part of the headnote in Facchini -v- Bryson (1952) 1 T.L.R. at page 1386, which reads:-

> "....the agreement must be construed as a whole and their relationship was determined by the law and not by the label which they chose to put on it".

He cited also a passage from the same case by Denning L.J., as he then was, who said:

> "In all the cases where an occupier has been held to be a licensee there has been something in the circumstances, such as a family arrangement, an act of friendship or generosity or such like, to negative any intention to create a tenancy. In such circumstances it would obviously be unjust to saddle the owner with a tenancy with all the momentous consequences that that entails nowadays, when there was no intention to create a tenancy at all".

The position we have arrived at seems to us to be this. While Mr. Syvret told us that it was the company's intention not to create a service tenancy but only to allow their employees and Mr. Loyer in particular to occupy the premises under a service agreement, he did agree that, in fact, it was a privilege for the employees to occupy it and so far as Mr. Loyer is concerned , he was not required to do so in order to fulfill his duties properly, nor was the occupancy necessary for the better fulfillment of those duties. Therefore if one propounded the test suggested by Lieutenant Bailiff Le Quesne in Ewart -v- Satchwell 1 JJ 5, the position here would appear to have been, under the circumstances described by Mr. Syvret, that in fact Mr. Loyer would be a tenant. However that is not the end of the matter, because while the company thought that in asking Mr. Loyer to sign the agreement it was conferring on him an agreement

for occupation only for as long as he remained in the employment, Mr. Loyer, on the other hand, did not apply his mind to it at all. He was quite prepared to sign it; he read it and then he signed it. Should we then impute to him an intention which he himself was quite unable to give us on evidence? It could well be and if the circumstances are as I have suggested, that in fact there was no agreement at all in the form of a written agreement but we would have to, I think, be convinced that that was so.

We think, however, that the proper approach is to try to ascertain what was the true relationship between the parties, in which case of course, we are entitled to take into account the written agreement. We find that Mr. Loyer, when he was in occupation, paid the water rates (that is set out in the agreement), the amount of money to be paid weekly was fixed in the agreement, it was described as rent, he paid his weekly money not at the same time as he received his wages, but separately a few moments or hours later, sometimes in the afternoon after being paid, and he paid it to another person in the employ of the company and received a receipt for the money in a book which he himself provided which is described as a rent book; he had exclusive occupation or possession of his flat because Mr. Syvret admitted that the company did not have a key to get into the flat, although it may have had access to the main hallway giving onto the three flats and we find also that he had decorated the flat. We also have been informed, although we were not told this during the hearing but subsequently, that he pays occupier's rates in the parish of St. Helier. That in itself is not conclusive as that matter was considered perhaps obiter in Granite Products -v- Renault 1 JJ 163. Taking all the facts into consideration and endeavouring to ascertain the true intention of the parties and what they did create, no matter what the label stuck on it or intended to stick on the agreement, we have come to the conclusion that Mr. Loyer was a tenant of the

company and therefore the action should be instituted in the Petty Debts Court in the usual way.

The plaintiff will pay the defendant's costs.