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ROYAL COURT

10th February, 1989

Before: The Deputy Bailiff, and
Jurats Lucas and Gruchy

Infraction: Glendale Hotel Holdings Limited

Two infractions of paragraph (1) (a) of
Article 14 of the Housing (Jersey)
Law, 1949.

Advocate S.C. Nicolle for the Crown
Advocate T.J. Le Cocq for the defendant Company.

JUDGMENT

DEPUTY BAILIFF: The Court cannot accept the submission of Mr. Le Cocq that because the beneficial ownership of the defendant company has changed and that because the existing beneficial owner was totally unaware of the infractions and potential prosecution until the summons for the present action was served (which we fully accept) we should substantially reduce the fines moved for.

In law, a company is a person, as is clearly recognised by Article 3 of the Interpretation (Jersey) Law, 1954.

In the words of Article 6 of the "Loi (1861) sur les Sociétés à Responsabilité Limitée", the company has "une durée continue et successive dans la personne de ses membres présents et futurs jusqu'à sa dissolution".

In effect Mr. Le Cocq is acknowledging the "durée continue" but is asking us to ignore the "durée successive". He is saying that because there has been a "succession" in the shareholding, we should treat the company as a different body, with exceptional circumstances.

In reply to a point that I made this morning Mr. Le Cocq said that it was always open to the Court to look to the real effect of its sentence. That of course is true, however it is the real effect of the sentence upon the defendant company that we have to consider and not the real effect on the beneficial shareholders. And here we have a recommendation from the Crown for total fines of £2,000 against a company which is the owner of a substantial private hotel - it has not been put to us that the company is insolvent or would suffer in any way from the imposition of the fines moved for.

We prefer not to comment on the propriety or impropriety of a firm of lawyers acting on both sides in a share vending transaction. We prefer not to comment on whether the maxim caveat emptor applies in this case. We are satisfied, because it is admitted, that a principal in the firm of lawyers was advised by the Housing Law Enforcement Officer that a prosecution was contemplated. We prefer not to comment on the extent of the enquiries that should be made by a legal adviser representing the purchaser in a share vending agreement. It was not known to the Housing Law Enforcement Officer that the principal to whom he spoke was in fact representing the vendor. We have no doubt that the lawyers concerned were acting, so to speak, at arm's length for their respective clients. We prefer not to comment on the fact that the information communicated by the Housing Law Enforcement Officer did not reach the partner acting on behalf of the purchaser nor on the fact that the share vending agreement apparently did not provide for the retention of a part of the sale price in the hands of trustees for a specified period to guard against undisclosed liabilities of the defendant company. We were told that the share vending agreement did contain an indemnity by the vendor but that he has left the

jurisdiction and that to pursue him under his indemnity would be very expensive; again we prefer not to comment. The possible inability of the present beneficial owners to recover any loss that they may incidentally incur or the possibility that they might have a just claim elsewhere are not matters for the Court today.

The matters that are relevant today are:-

1. There was a blatant breach of condition after the Housing Committee had shown itself willing to negotiate a variation to assist the defendant company, a variation clearly established by correspondence and a varied consent.
2. There was a loss to bona fide inhabitants of Jersey and thus to the Island's housing stock of a self-contained flat.
3. Fines to be imposed in such cases have been established by previous cases and if they are to be altered they should be altered upwards to reflect the changes in money value and not downwards. We might add that if we were to accede to Mr. Le Cocq's request, the resulting decision would no doubt be used, when memories had faded or the Court was differently constituted without the exceptional circumstances having been brought to the notice of the then sentencing Court as a precedent to show why in a future similar case the total fine should not exceed £1,000.

This Court is determined to uphold the Housing Law and the Housing Committee and Department who are trying to administer the law and regulations in the best interests of bona fide residents of this Island.

Therefore the conclusions are granted. On charge 1, the defendant company is fined £1,500; on charge 2, the defendant company is fined £500; making total fines of £2,000; and the defendant company will pay £350 towards the Crown's costs.