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30, 1950

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In the Privy Council.

1977

No. 6 of 1950.

UNIVERSITY OF LONDON
G.I.

ON APPEAL FROM THE COURT OF APPEAL,
MALTA

ADVANCED
STUDIES

BETWEEN

JOSEPH, PAOLO, CETTINA, the widow of CHARLES MICALLEF, ROSARIA *sive* LUCY, the wife of HENRY GALEA, and JOHN, brothers and sisters of ZAMMIT BONETT, and MARIETTA, the widow of ALFREDO ZAMMIT, as the successors of ALFREDO ZAMMIT, deceased; MARY, the widow of ALFRED AXISA, and EUGENE, the wife of MICHAEL AZZOPARDI, DOLORES, the wife of EMMANUELE BRIFFA, ANNIE, EDDIE, GEORGE, ROBERT and JOSEPH, brothers and sisters AXISA, as the successors of ALFREDO AXISA, deceased; MARIANNA, the widow of ALFREDO DEBONO, and JOSEPH, MARY the wife of ALFREDO LANZON, DORIS, the wife of JOSEPH MIFSUD, AMELIA, the wife of JOSEPH ZAMMIT BONETT, and CARMELO, brothers and sisters DEBONO, as the successors of ALFREDO DEBONO, deceased; EMMANUELE GRECH, and his children, namely CHARLES *sive* CARMELO, and MARY, the wife of DAVID SMITH, as the successors of their late mother CARMELA, and in respect of their mother's share in the community of acquests between her and her said husband; EDGAR BALDACCHINO; and, in so far as their interests may be concerned, GEORGE, ALEXANDER, EDGAR, JOHN and ANTHONY, brothers PORTANIER, as parties concerned in the issue in so far as it affects the said EDGAR BALDACCHINO; and WALTER and FRANK DEBONO and WILLIAM AXISA, joined in the suit by Decree given on the 28th June, 1947; and by Minute dated 17th October, 1947, CARMELO DEBONO, who took up the proceedings as attorney on behalf of his brothers WALTER and FRANK DEBONO, absent from these Islands; and by Minute dated 27th February, 1948, the said WALTER and FRANK DEBONO who, having returned to Malta, have personally taken up the proceedings in the stead of CARMELO DEBONO

UNIVERSITY OF LONDON
W.C.1.
7 JUL 1953
INSTITUTE OF ADVANCED
LEGAL STUDIES

AND (Defendants) APPELLANTS

JOSEPH, JOHN and CARMELINA AXISA, children of the late EMMANUELE AXISA; VINCENZA, the widow of the said EMMANUELE AXISA; JOSEPH, VICTOR, CARMELO and FRANK CAMILLERI, as parties concerned in the issue in succession to their father, PETER CAMILLERI; and ROBERT, HARRY, HECTOR and VICTOR PACE, as successors to the share previously held by their brother, DR. GIUSEPPE PACE ... (Plaintiffs) RESPONDENTS.

CASE FOR THE APPELLANTS

RECORD

1.—This is an appeal from the Judgment of the Court of Appeal of Malta, dated the 29th November, 1948, which affirmed the Judgment of H.M. Commercial Court of Malta of the 4th May, 1948.

p. 1

2.—By a Writ of Summons issued in the said Commercial Court on the 3rd May, 1947, the Respondents claimed that the Appellants should show cause why an order should not be made directing them to vacate and surrender the "Axisa" cinematograph situate at No. 5 Tower Road, Sliema, Malta, and to hand over the premises to the Respondents together with the benches, projectors and all the other equipment thereof with costs and without prejudice to the action for the recovery of damages to be assessed in separate proceedings. 10

p. 71 and
p. 75

3.—The Respondents' action was based on two notarial leases dated respectively the 29th July, 1930, and the 2nd July, 1934, under the first of which the legal representative of the Respondents granted to Alfredo Zammit (now deceased and represented in this action by some of the Appellants) the lease of the said cinematograph for the period of two years obligatory, to run from the day on which the premises were handed over to the said Alfredo Zammit in a good state of repair, to wit, from the 5th August, 1930, and thereafter for the period of two years optional, at the yearly rent of £185. 20

p. 81

4.—It appears that shortly thereafter a dispute arose between the lessors and the lessee as to the proper interpretation of some of the terms of the lease and more particularly as to the widening of the door of the cinema. This dispute formed the subject of a suit, No. 121/1931, which resulted in the Judgment of the Commercial Court of Malta of the 11th March, 1932. It was eventually compromised whilst still pending before the Court of Appeal.

5.—Thereupon, the parties agreed to the renewal of the 1930 lease, but on certain new terms which were embodied in a notarial contract dated the 2nd July, 1934. 03

p. 75

6.—It was stipulated by that contract that the new lease should be for a period of six years obligatory as from the 1st August, 1934, and successively for the period of six years optional at the rent of £195 per annum payable quarterly in advance. It was further agreed, *inter alia*, that (a) the improvements which had been made on the premises, and those that might still be made therein, should go to the benefit of the landlords, without any right to any compensation therefor; (b) that the tenants should not suspend the cinematograph shows and other performances except during the months of July, August and September, or on good and sufficient grounds and this in order not to impair the goodwill of the cinema "Axisa"; (c) that the tenants should change the name of the cinema into 40

another name to be approved by the landlords within one month from the date of the commencement of the lease. The name was in fact so changed into "Alhambra Cinematograph" within the prescribed period. RECORD
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p. 4

7.—By a Judicial letter dated the 26th March, 1947, the Respondents called upon the Appellants to surrender and hand over to them the said premises on the 30th April, 1947, together with the respective goodwill, improvements and equipment, and warned them that, unless they gave them an assurance within two days that they proposed complying with this request, the Respondents would take steps against them "according to law" and would also hold them "answerable for such damages as the Respondents might sustain in consequence of any delay on the Appellants' part." p. 86

8.—Following this Judicial letter, the present Writ of Summons was issued by the Respondents on the 3rd May, 1947, as stated in paragraph 2 hereof.

9.—It appears from the evidence given before the trial Judge that at the time the original lease was entered into, the "Axisa" cinematograph showed silent films only, but that subsequently, with the consent and approval of the Respondents, the cinematograph was refurbished and converted into a "talkie" at the Appellants' expense. The Appellants also obtained, for the first time, a licence from the Police authorities for the sale of wines and spirits in the premises and also secured a new entertainments licence. pp. 13, 14
and 16
p. 15

10.—By a Judgment delivered on the 4th May, 1948, the Commercial Court held that the lease was in respect of a business concern, as distinct from a building destined for use as a cinematograph, and did not therefore come within the provisions of Ordinance No. XXI of 1931 (chapter 109 of the Revised Edition of the Laws of Malta), regulating the Reletting of Urban Property. Accordingly, when the lease expired, the Appellants were not entitled to plead the extension of the lease *ope legis*, just as it was not necessary for the Respondents to apply to the Rent Regulation Board for the recovery of the premises. pp. 19-24

On these grounds, the Court dismissed the plea of incompetency set up by the Appellants and allowed the Respondents' claim for the eviction of the Appellants from, and the surrender of, the cinematograph in question—giving the Appellants 15 days' time within which to vacate the premises and to return to the Respondents all of such items out of those listed in the inventory as were still to be found at the cine-talkies, bar all others and bar the benches and the piano, with costs against the Appellants. p. 74

11.—The Appellants appealed to the Court of Appeal and that Court by a Judgment given on the 29th November, 1948, held that "once the lease was not in respect of premises for use as a 'talkies' but concerned pp. 32-38

RECORD — “ premises which had already been used as such and, in fact, the business
 “ itself—and once that lease therefore included the goodwill, equipment
 “ and accessories mentioned in the respective contract,—the ordinary
 “ Courts retained their jurisdiction. By no stretch of the imagination
 “ could it be said that the premises in question, which had for so long been
 “ known as a cinematograph, and which were later converted into a
 “ ‘ talkies,’ had enjoyed no goodwill. No importance was to be attached
 “ to the fact that the goodwill increased in value during the period of
 “ sixteen years during which the premises had been held on lease ; it was
 “ a development which the tenants could have very easily foreseen at the 10
 “ time when they rented the property. Nor was the Court prepared to
 “ accept the Appellants’ view that the premises had been turned into a
 “ ‘ shop ’ because of the bar they introduced therein.”

The Court accordingly dismissed the appeal and affirmed the Judgment of the Commercial Court with costs against the Appellants—saving that the period of 15 days established by that Judgment was to begin to run from the date of the Judgment of the Court of Appeal.

p. 42 12.—The Appellants applied to the Court of Appeal on the 7th December, 1948, for a stay of execution pending the determination of this appeal by H.M. Privy Council. 20

p. 60 13.—By a decree given on the 21st January, 1949, the Court of Appeal refused to order the “ suspension of the judgment,” but ordered that the Respondents should tender security for the due enforcement of the aforesaid Judgment of the 29th November, 1948, and should bind themselves, under the general hypothecation of the whole of their present and future property, to deposit in the National Bank of Malta, throughout the intervening period until the case was determined by the Judicial Committee, every six months in arrear, the profits realised during that period of six months, with interest thereon, such deposit to remain pledged until final Judgment in the present case is given by the Judicial Committee. Costs 30 thereof reserved to the final order. By a further decree of the 4th February, 1949, the Court of Appeal ordered that the hypothec required by the decree of the 21st January should be for the sum of £1,000.

p. 65

14.—The Appellants submit that the said Judgment of the Court of Appeal of Malta, dated the 29th November, 1948, is wrong and should be reversed with costs for the following, among other,

REASONS

- (1) BECAUSE the matter in issue relates to the extension of a lease of business premises and accordingly the competent Court is the Rent Regulation Board set up by Malta Ordinance No. XXI of 1931 (The “ Reletting of Urban Property (Regulation) Ordinance ”). 40

- (2) BECAUSE the interpretation adopted by both Courts in Malta that the said Ordinance is applicable only to halls used as a cinema to the exclusion of buildings leased as cinema-going concerns is erroneous.
- (3) BECAUSE the definition of a "shop" in Article 2 of the said Ordinance includes "any cinema hall principally leased for the exercise therein of any art or trade," and therefore includes the "Axisa" cinema.
- 10 (4) BECAUSE by Article 4 of the said Ordinance it is not lawful for the lessor at the expiration of the period of tenancy to refuse the renewal of the lease without the permission of the Rent Regulation Board.
- (5) BECAUSE further or in the alternative, the term "improvements" in the lease agreements should be construed as applying solely to the improvements effected by the tenants to the building itself and cannot refer to the conversion of a silent cinema into a "talkie" and to the refurnishing and equipment thereof.
- 20 (6) BECAUSE in the further alternative, the goodwill of the cinema "Axisa" belongs in part to the Appellants who, acting with the Respondents' consent, converted the said silent cinema into a talking cinema.

C. J. COLOMBOS.

In the Privy Council.

No. 6 of 1950.

ON APPEAL FROM THE COURT OF APPEAL
MALTA.

BETWEEN
JOSEPH ZAMMIT BONETT
AND OTHERS (*Defendants*) APPELLANTS
AND
JOSEPH AXISA AND OTHERS
(*Plaintiffs*) RESPONDENTS.

CASE FOR THE APPELLANTS

BURCHELLS,
9 Bishopsgate, E.C.2,
Solicitors for the Appellants.