

15, 1955

CV 2.6.1

No. 28 of 1954.

In the Privy Council.

UNIVERSITY OF LONDON
 W.C.1.
 -4 JUL 1956
 INSTITUTE OF JURISPRUDENCE
 LEGAL STUDIES

ON APPEAL

FROM THE SUPREME COURT OF THE BAHAMA ISLANDS, EQUITY SIDE (Suit No. 29 of 1953).

43548

BETWEEN

WILLIAM HENRY SANDS (Plaintiff) . . . Appellant

AND

HARBOUR CLUB LIMITED (Defendants) . . . Respondents.

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Case for the Respondents.

RECORD.

1. This is an appeal from the Judgment of the Supreme Court of the Bahama Islands, Equity Side (Henderson, C.J.), dated the 30th January, 1954, dismissing the action. Leave to appeal to Her Majesty in Her Privy Council was granted to the Appellant by an Order of the said Supreme Court dated the 9th March, 1954.

pp. 32, 46.

p. 50.

2. By the said action the Appellant claimed (among other things) possession of certain premises in the City of Nassau, in the Island of New Providence, known as the Spider Web Garden Club, which premises had been demised by the Appellant to the Respondents, on the ground that the Respondents, in breach of a covenant, had sub-let or parted with possession of the said premises or part thereof; and the question for determination in this appeal is whether the Respondents did or did not underlet or part with the possession of the said premises or any part thereof.

3. By a Lease, dated the 18th April, 1950, and made between the Appellant of the first part, the Respondents, a company incorporated in and under the laws of the Bahama Islands, of the second part and William George Elcock (hereinafter called "Mr. Elcock") of the third part, the Appellant demised unto the Respondents the said premises known as the Spider Web Garden Club, together with the entrance thereto from Bay Street and the open sections of the Harbour of Nassau, situate on the Northern Side of Bay Street in the said City of Nassau, from the 1st May, 1950, for the term of 8 years, at the yearly rent of £900.

Exhibit A, p. 51.

p. 51, l. 34.
p. 52, l. 17.

4. By clause 2 of the said Lease the Respondents covenanted with the Appellant, by sub-clause (f) thereof, not to assign underlet or part with the possession of the said premises or any part thereof without first obtaining the written consent of the Appellant such consent however not to be unreasonably withheld in the case of a responsible person.

p. 53, l. 6.
p. 53, l. 8.

5. By clause 5 of the said Lease it was provided and agreed, by sub-clause (a) thereof (among other things) that if any covenant on the Respondents' part therein contained should not be performed or observed, it should be lawful for the Appellant at any time thereafter to re-enter upon the said premises or any part thereof in the name of the whole and thereupon the said demise should absolutely determine. 10

Exhibit B, p. 35.

6. On the 13th January, 1951, an Agreement under seal (hereinafter referred to as "the Club Agreement") was made between the Respondents (thereinafter called "the Company") of the first part, Maurice Handler (thereinafter and hereinafter called "the Manager") of the second part and Roscoe Whittleton Thompson (thereinafter and hereinafter called "the Guarantor") of the third part, the purpose of which was set out in the second of the two recitals thereto in the following terms:—

p. 35, l. 24.

"And Whereas it has been agreed that the Company should appoint the Manager to be the Manager of the said Club upon the terms hereinafter expressed." 20

7. The material part of clause 1 of the Club Agreement was as follows:—

p. 35, l. 27.

"1. The Company hereby appoints the Manager to be the sole Manager of the Club known as The Spider Web Garden Club . . . from the First day of January A.D., 1951 to the Thirtieth day of November, A.D. 1951."

and the Club Agreement contained no words by which the Respondents expressly underlet, underleased, let or leased to the Manager the premises demised by the said Lease or any part thereof, or expressly granted to the Manager any estate or interest in, or any exclusive right to the possession of, the said premises or any part thereof, or otherwise expressly parted with the possession of the said premises or any part thereof. 30

p. 36, l. 5.

8. Clause 5 of the Club Agreement provided, however (among other things) that the Manager should pay the sum of £900 "in respect of rental of the said Club"; clause 7 of the Club Agreement provided (among other things) that the Manager should "open the Club at such times during the engagement as he thinks fit" and that the Respondents should have the right "to cancel this agreement" on the breach of any of the conditions contained therein; clause 8 of the Club Agreement provided that the Manager agreed to "take over the Club" in its then condition as therein mentioned; clause 9 of the Club Agreement provided that "At the termination of the engagement the Club is to be handed back to the Company" in such condition as therein mentioned; and clause 16 of the Club Agreement provided that anyone authorised by the Respondents 40

p. 36, l. 14.

p. 36, l. 16.

p. 36, l. 28.

p. 36, l. 30.

p. 37, l. 22.

should at all reasonable times have permission to enter and view the state of repair of the said Club premises and to observe the manner in which the said Club was operated.

9. Clause 10 of the Club Agreement provided (among other things) that the Manager should have the option to renew "the engagement" for a further period of one year to the 30th November, 1952, subject as therein mentioned. p. 36, l. 34.

10. The Guarantor was a party to the Club Agreement only because by clause 14 thereof he guaranteed the Manager's undertakings as to the payment of the rental and other liabilities contained therein and covenanted to indemnify the Respondents against the Manager's failure to discharge all liabilities of the Club from the 1st January, 1951, up to and including the 30th November, 1951, and also during any renewal of the Club Agreement. p. 37, l. 13.

11. The remainder of the Club Agreement may also be material for the purpose of determining the true meaning and effect of the Club Agreement, which is set out in full in the Judgment of the learned Chief Justice of the Bahama Islands. p. 35.

12. The following are among the facts which were, in effect, found by the learned Chief Justice :—

(A) The Manager opened the Spider Web Garden Club under the Club Agreement. p. 42, l. 33.

(B) When the Club Agreement was signed Mr. Elcock, who was an officer of the Respondents, retained a key of the front entrance and also of the office of the said Club. p. 42, l. 23.
p. 42, l. 34.

(C) The licences for the said Club were at all material times in the name of Mrs. Elcock, the wife of Mr. Elcock, who was also an officer of the Respondents. p. 43, l. 1.

(D) In October, 1951, or thereabouts, the Manager left the said Club and the Guarantor then came to an arrangement with the said Mrs. Elcock to carry on the said Club by himself and in fact did so. p. 43, l. 26.

(E) There was no fresh written agreement between the Respondents and the Guarantor concerning the said Club. p. 43, l. 28.

(F) Both Mr. Elcock and the Guarantor considered that the Club Agreement applied to the Guarantor, when he carried on the said Club, in the same way as, according to its terms, it applied to the Manager. p. 43, l. 29.
p. 43, l. 33.

(G) The Guarantor carried on at the said Club until April, 1953, by permission of the Respondents and eventually vacated then at the request of the said Mrs. Elcock. p. 43, l. 37.

13. The learned Chief Justice in the course of his Judgment said as follows :—

"By consequence I propose to examine the language of the document Ex. B (the Club Agreement) in the first place to endeavour p. 44, l. 4.

to see whether it can be said whether the proper construction to be placed upon it is that it is a lease or merely an agreement by way of licence following an appointment and not meant to create any interest in land."

Later in his said Judgment the learned Chief Justice said :—

p. 45, l. 41.

" but it does seem to me that having regard to the above mentioned factors of the licence, paragraph 7 of the agreement and the retention of keys the Defendant Company had no intention of parting with the legal possession ; indeed, as I have said before, it had no intention of creating an interest in land "

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and finally :—

p. 46, l. 4.

" For the above reasons and on all the facts I have no hesitation in answering the first issue in the negative, that is to say that the Defendant Company did not sub-let or part with possession of the premises in breach of the covenant in the lease but in the circumstances I dismiss the case with no order as to costs."

p. 33, l. 33.

14. In addition to the issue whether or not the Respondents sub-let or parted with possession of the premises in breach of the covenant in the lease, three other issues were framed by consent in the said action in the said Supreme Court ; but the learned Chief Justice did not in his said Judgment pronounce on any of the said three other issues ; and on a Motion to the said Supreme Court on the part of the Appellant for a supplemental judgment in regard to the said three other issues, an Order was made by the said Supreme Court on the 9th March, 1954, that no supplemental judgment be delivered.

p. 49.

15. The Respondents humbly submit that the Judgment of the said Supreme Court dated the 30th January, 1954, is right and should be affirmed and that the Appellant's appeal therefrom should be dismissed for the following (among other)

REASONS

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- (1) BECAUSE, according to the true construction of the Club Agreement, the Respondents did not thereby underlet or part with the possession of the said premises demised by the said Lease, or any part thereof, either to the Manager or to the Guarantor.
- (2) BECAUSE, according to the evidence which has been adduced in the said action, the Respondents have not otherwise underlet or parted with the possession of the said premises or any part thereof.
- (3) BECAUSE the said Judgment of the said Supreme Court is right and should be affirmed.

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B. F. MENDEL.

In the Privy Council.

ON APPEAL

*from the Supreme Court of the Bahama
Islands, Equity Side (Suit No. 29 of 1953).*

BETWEEN

WILLIAM HENRY SANDS

(Plaintiff) *Appellant*

AND

HARBOUR CLUB LIMITED

(Defendants) *Respondents.*

Case for the Respondents

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