

28,1959

1.

IN THE PRIVY COUNCIL

No. 37 of 1958

ON APPEAL

FROM THE FEDERAL SUPREME COURT, TRINIDAD
FOR THE WEST INDIES

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
- 9 MAR 1960
25 RUSSELL SQUARE
LONDON, W.C.1.

B E T W E E N :

WILFRED ISAAC
(Defendant) Appellant

- and -

HOTEL DE PARIS LIMITED
(Plaintiff) Respondent

10 55470

CASE FOR THE APPELLANT

Record

pp.139-144
pp.116-134

1. This is an appeal from a Judgment of the Federal Supreme Court for the West Indies, dated the 27th May, 1958, dismissing an appeal from a Judgment of the Supreme Court of Trinidad and Tobago, dated the 6th December, 1957, whereby the Respondent (hereinafter called "the Plaintiff") was granted a declaration that it was entitled to possession of certain premises, namely the first and second floors of No. 10, Abercromby Street, Port of Spain, which premises are known as the Parisian Hotel, and an order for possession of the same.

2. At the material times the Appellant (hereinafter called "the Defendant") was in occupation of the said premises, and the principal issues which arise for determination on this appeal are as follows :-

30 (i) Whether the Defendant is a tenant of the premises.

(ii) Whether the Defendant, if not a tenant, is in possession of the premises as a licensee.

(iii) Whether, if the Defendant is not a tenant

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but a licensee, his licence was ever determined.

- (iv) Whether on any view of the capacity in which the Defendant occupied the premises the Plaintiff proved that it was entitled to possession thereof.

It would appear to be common ground that if the Defendant was in possession of the premises as a tenant, his tenancy has never been determined and therefore the Plaintiff is not entitled to the relief granted by the Courts below. 10

pp. 1-2

3. The suit was commenced by a Writ of Summons in the Supreme Court, dated the 19th October, 1956. The Plaintiff by its Statement of Claim, dated the 13th December, 1956, alleged, inter alia, that the Plaintiff is a limited liability company and the lessee of the premises in question and that -

pp. 3-4

"4. The Defendant has since the 1st day of March, 1956, been and is wrongfully in possession of the said premises and has refused to give to the Plaintiff possession of the premises." 20

pp. 4-5

The Defendant by his Defence dated the 8th February, 1957, stated inter alia that he is the tenant of the Plaintiff in respect of the said premises at a monthly rental of \$250.00 and denied that he is wrongly in possession thereof.

p.26 et seq.
pp.26-29

4. The trial was held in the Supreme Court (cor. Clement Phillips, Ag.J.) on various dates between the 3rd October, 1957, and the 6th December, 1957. The Plaintiff's case as put forward at the trial was in outline as follows :- 30

pp.146-147

That in 1955 one Mr. Attie Joseph purchased shares in the Plaintiff company and had a controlling interest. That the Plaintiff had premises known as the Hotel de Paris, and that the premises in dispute, the Parisian Hotel, were used as an annexe to the Hotel de Paris. That by an Agreement in writing dated the 1st October, 1955, Joseph agreed to sell 15 fully paid-up shares to the Defendant for the price of \$4687.50, of which sum \$2558.30 was still unpaid. That after the said Agreement was made the Defendant by arrangement with Joseph supervised some repair work at the Parisian Hotel, 40

for which Joseph paid \$2,000. That about the end of 1955 the Defendant suggested that the Plaintiff could make some money by taking out a night-bar licence in connection with the Parisian Hotel, that Joseph agreed and told the Defendant to get the licence. That on the 28th January, 1956, the Defendant took out the licence in his own name. That, according to the Plaintiff's contention, the Defendant was in occupation of the Parisian Hotel as the Manager thereof, from the time of the grant of the night-bar licence. That the Defendant put a sign outside the Parisian Hotel bearing the words "Wilfred Isaac and Hotel de Paris Annex Night Bar". That subsequently Joseph discovered that the Defendant was himself purchasing liquor to stock the Parisian Hotel and also that the licence had been taken out in the Defendant's name. That by the 1st December, 1955, the Defendant was \$100 in arrear with the payments for shares due under Agreement made on the 1st October, 1955. That a conference took place on the 17th February, 1956, at which the parties agreed on terms which were later set out in a written draft prepared by the Plaintiff's solicitor; the alleged terms, as set out in the said draft, provided inter alia that the Defendant should "take and manage for his own use and benefit the whole of the second floor of the Parisian Hotel" and that he should "pay the rent of \$250.00 per month for the said second floor together with all disbursements in respect of telephones, electricity and other expenses incurred by him." That the agreement made on the 17th February, 1956, was never put into writing, certain correspondence passed, showing inter alia that the parties were in dispute as to what the terms of the agreement were, and that by a letter from the Plaintiff to the Defendant, dated the 7th May, 1956, the Plaintiff put an end to all relations between the parties and terminated the Defendant's occupation of the Parisian Hotel.

5. The Defendant's case was in outline as follows :-

That early in September, 1955, Joseph asked the Defendant to assist him to run the Hotel de Paris and agreed to pay him \$400 a month and that from the 4th September, 1955, the Defendant went daily to the Hotel de Paris and there performed certain services for the Plaintiff. That in the early days the Defendant also went to the Parisian Hotel,

<u>Record</u>	which was not yet licensed premises, to look over things there. That later some repairs were done to the Parisian Hotel. That about mid-December, 1955, an arrangement was made between the Plaintiff and the Defendant whereby the Defendant was granted a tenancy of the whole of the two floors comprised in the Parisian Hotel at the rent which the Plaintiff paid its landlord, viz. \$250.00 per month. That the Defendant went into possession of the Parisian Hotel about December, 1955, and had been in possession ever since as tenant to the Plaintiff. That a night bar licence was obtained in January, 1956, and later on application was made for a Special Hotel Licence. That terms were agreed at the meeting on the 17th February, 1956 (different from those alleged by the Plaintiff) but the agreement never materialised. That the proposed agreement of the 17th February, 1956 was to have been a novation of the agreement made in mid-December, 1955.	10 20
p.114, 11. 2-9		
	The Agreement in writing dated the 1st October, 1955, was not disputed but the Defendant did dispute the allegation made on behalf of the Plaintiff that on the 1st December, 1955, he was in arrear with the payments due in respect of the purchase of shares.	
pp.30-65 pp.69-112	6. Evidence was adduced by both parties. Amongst the facts proved by the evidence given on behalf of the Plaintiff, are the following :-	
pp.146-147	(i) The Agreement in writing dated the 1st October, 1955, whereby the Defendant agreed to purchase 15 shares for the price of \$4687.50.	30
p.39, 11.14 - 15	(ii) Joseph put the Defendant into the Parisian Hotel after the Defendant obtained a night bar licence.	
p.39, 11.23 - 35. p.64, 11.13 - 21	(iii) The Defendant paid \$250 per month to the Plaintiff in respect of the Parisian Hotel. The first two payments were paid by the Defendant in cash direct to the Secretary and later payments were by cheque.	40
pp.150-151, 152-155, 159-161.	(iv) The payments by cheque were expressed to be payments for rent, some of them accompanied by letters requesting acknowledgment of receipt; Joseph never acknowledged any of them.	
p.41, 11.19 - 24. pp.150,151, 152-155, 159-161.		

(v) The Defendant stocked the bar at the Parisian Hotel.

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(vi) On the 23rd October, 1957, Joseph attended at the Magistrates Court, Port of Spain, to oppose an application by the Defendant for a Special Hotel Licence in respect of the Parisian Hotel, and there gave evidence on oath in the course of which he stated -

pp.42-43

pp.161-163

10 "Parisian Hotel is a tenant to Hotel de Paris.....Hotel de Paris are sub-letting to Isaac. Isaac pays \$250.00 per month rent. He is not in default ... Isaac is only renting the 2nd floor ... The 2 cheques, 1.4.56 and 1.10.56 shown me are for rent due by Isaac and made in my favour ... Hotel de Paris has the hotel opposite the premises rented to Isaac. Isaac
20 rents from Hotel de Paris Ltd."

7. With regard to the new agreement which both parties stated was discussed on the 17th February, 1956, the Plaintiff's evidence was that the terms were agreed but that no agreement was ever signed; the evidence was not entirely clear as to what the alleged terms were. The Defendant's evidence regarding this new agreement included the following:-

p.33, 11.22-45.

pp.50-51.

p.52, 1.24-
p.53, 1.3.

p.78, 1.38-
p.79, 1.40.

30 "This meeting was to embody the verbal agreement that took place in December, 1955 - along with some other points.

.
I was to pay the remainder due on the shares
.....

.
The rent was \$250. per month - the same rent I was already paying."

The draft agreement sent by the Plaintiff's Solicitor to the Defendant's Solicitor contained in Clause 1 thereof a provision for the payment by the Defendant to Joseph of the sum of \$4,687.50 (the price stated in the Agreement in writing dated the 1st October, 1955, part of which had been paid by the 17th February, 1956) and the delivery by Joseph to the Defendant of 15 fully paid up shares in the

p.51, 11.9-10.

pp.155-157.

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Record
p.114, 1.4.

Plaintiff Company. It was common ground that the agreement of the 17th February, 1956 never materialised.

p.41, 11.4-
6.

p.73, 1.1.

8. On the question of the payments made by the Defendant under the Agreement in writing dated the 1st October, 1955, up to the 1st December, 1955, Joseph stated that as far as he remembered the total paid by that date was \$2,129.20 but the Defendant said that the correct total paid was \$2,329.20 (i.e. he was not in arrear at that date).

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9. The evidence given on behalf of the Plaintiff as to the alleged determination of the Defendant's right to occupy the Parisian Hotel was that of Joseph, who in re-examination said :-

p.43, 1.37.

"Isaac first went into the Parisian Hotel for the purpose of running a night bar for Hotel de Paris Ltd. There was a condition attached to his doing so. The condition was to pay the balance of money on the shares. I had certain disputes with him after he obtained the Night Bar Licence.

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He did not keep to the terms of the agreement arrived at on the 17th February, 1956. As he didn't keep to that agreement I consider he had no business there. I did not agree to his being there. I served him with a notice to quit by letter of 7th May, 1956."

The said alleged letter, which was not admitted by the Defendant, was in terms as follows:-

p.152, 1.1.

"Dear Sir,

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Re: Agreement for purchase of Shares
in the Hotel de Paris Limited.

I have to refer to previous correspondence passing between us on the above-mentioned subject and to inform you that your deposits made under the above agreement have been forfeited. You are required to remove and take away such stock and other materials as you have at the Parisian Hotel within seven (7) days of the date hereof, and I am to warn you that if you fail to do so I shall be obliged to take such steps as may be necessary to have them removed therefrom.

40

Yours faithfully,

"

10. The Defendant gave evidence in support of his case and in particular that in September, 1955 he was engaged to render services at the Hotel de Paris at \$400 a month; that in the middle of December, 1955, he agreed to take the Parisian Hotel and pay a rent of \$250 per month, Joseph saying to him that whatever he took would be his profit in the company representing his shares; that he paid the first rent before Christmas 1955, in cash, and that he also made the second payment of rent, in cash, later paying by money order; and that he got a night bar licence for 1956 and also for 1957, the fee for such licence being \$720. The Defendant put in his current night bar licence and Dance Hall licence. The Defendant stated that he was in possession of the Parisian Hotel as a tenant and that this arrangement was separate from the agreement regarding the purchase of shares. Amongst the agreed correspondence was a letter dated the 3rd April, 1956, from the Defendant's Solicitor to the Plaintiff's Solicitor, referring to the sum of \$250.00 enclosed being rent to 1st April 1956, and a further letter dated the 1st May, 1956, referring to a similar sum enclosed being rent to the 30th April, 1956.

Record
pp.69-101
p.71, 11.16-
26.

pp.75-76.
p.75, 11.34-
36.

p.76, 11.12-
20.

pp.77-78.
pp.78, 164-
165.

p.96, 1.34-
p.97, 1.9.

p.150

p.151

11. The learned trial judge held in favour of the Plaintiff inter alia as follows :-

- (A) That there was no verbal agreement for a tenancy of the Parisian Hotel at a rent of \$250 per month about the middle of December, 1955.
- (B) That the position after the 26th January, 1956, was that the Defendant was installed at the Parisian Hotel for the purpose of managing a night bar on the Plaintiff's behalf.
- (C) That the Plaintiff was now entitled to possession because by the letter dated the 7th May, 1956, the Plaintiff required the Defendant to remove all his belonging from the Parisian Hotel within 7 days from the date of the letter.

p.119, 11.38-
45.

p.120, 11.31-
34.

p.131, 11.7-
17.

In reaching these conclusions the learned trial judge appears to have based his judgment substantially upon the following findings and observations:-

- (i) In December, 1955, and January and February 1956, guests staying at the Parisian Hotel paid the Plaintiff not the Defendant.

p.120, 1.49-
p.121, 1.8.

Record
p.121, 11.9-
38

(ii) The Plaintiff produced a series of documents evidencing the payment by the Plaintiff of various sums in connection with the Parisian Hotel for wages, liquor and miscellaneous expenses.

p.121, 1.39-
p.122, 1.2

(iii) The Plaintiff produced documentary evidence in support of its allegation that for some time the Defendant accounted to the Plaintiff in respect of sales at the Night Bar, after Joseph had remonstrated with the Defendant for operating the Bar on his own behalf.

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p.122, 1.8-
p.123, 1.6.

(iv) The Defendant in the view of the learned judge was thoroughly discredited by cross-examination in relation to the documentary evidence referred to in (ii) and (iii) above.

p.123, 11.7-
28.

(v) The Plaintiff -

Paid wages of persons employed at the Parisian Hotel, up to 17th February, 1956.

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Paid bills for telephone service there, up to 5th April, 1956.

Paid bills for electric current used there, up to 17th February, 1956.

Paid in January and February, 1956 certain sums for work done in connection with the billiard table installed at the Parisian Hotel.

p.120, 11.31-

(vi) The Defendant had been tempted falsely to assert that he was a tenant, apparently because he had been installed at the Parisian Hotel to manage a night bar on the Plaintiff's behalf and when -

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"...he was in default with regard to the payments due under the agreement of the 1st October, 1955"

and because he had obtained in his own name a licence which was capable of being turned into quite a lucrative business.

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(vii) None of the monthly payments of £250 was made before the meeting of the 17th February, 1956.

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p.127, 11.35-
37.

(viii) The learned judge stated that the fact that cheques for payment of the monthly sums purport to be on account of payment of rent was evidence of no value and that he attached no importance to it.

p.127, 11.24-
44.

10 (ix) In spite of the evidence given by Joseph when opposing the Defendant's application for a Special Hotel Licence, that Hotel de Paris were "sub-letting" to the Defendant, the learned judge stated that it was impossible in the circumstances of the case to impute an intention on the part of the Plaintiff to enter into the relationship of landlord and tenant with the Defendant.

p.127, 1.45-
p.130, 1.23

20 The only observations made by the learned judge as to the capacity in which the Defendant was in occupation of the Parisian Hotel were as follows:-

30 "The defendant having failed to acquire the shares in the company, any claim that he might, in the event of his acquisition of the shares, have had for remaining in possession of the Parisian Hotel as a contractual licensee in my opinion, clearly fails. As already stated, I believe Joseph's explanation as to the circumstances under which the defendant was originally put into occupation of the premises, viz., for the purpose of establishing and managing a Night Bar on behalf of the company."

p.130, 11.31-
41.

As for the alleged notice in the letter dated the 7th May, 1956, the learned judge stated -

40 "Joseph swore that he served the defendant with a notice to deliver up possession by letter dated the 7th May, 1956. It does not appear that any notice to produce this letter was ever served on the defendant, nor did he specifically admit the receipt of it. A copy of it was, however, admitted into evidence by agreement of the parties. By this letter the defendant was required to remove all his belongings from the Parisian Hotel within 7 days from the date of the letter".

p.131, 11.7-
17.

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Finally, the learned judge considered the effect of the continued payment of the monthly sums of \$250 after the 7th May, 1956, as to which he said :-

p.131, 11.18-30.

"The defendant, however, thereafter continued in possession of the premises, and this action was commenced by writ of summons dated the 19th October, 1956. During the period between the 7th May, 1956, and the date of issue of the writ of summons, the defendant continued forwarding to Joseph monthly sums of \$250 purporting to be by way of 'rent' for the premises, and it might be suggested that acceptance of these sums by Joseph would, whatever the position might otherwise have been, in itself have the effect of creating a tenancy between the company and the defendant."

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p.132, 11.11-16.

The learned judge held, however, that there was no change of intention on the part of the Plaintiff between the 7th May, 1956, and the date of the issue of the Writ.

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12. The Defendant submits that the learned judge misdirected himself in law and on the facts and that the judgment of the Supreme Court is unsatisfactory, in particular in the following respects:-

p.118.

(a) It was not open to him to find any conclusion upon the Plaintiff's contention that the Defendant was in arrear with payments under the agreement of the 1st October, 1955, because the learned judge had considered the evidence and said:-

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p.118, 1.29.

"I make no specific finding on this point."

(b) The finding that none of the monthly payments of \$250 were made before the meeting of the 17th February, 1956, was contrary to the evidence.

(c) The learned judge erred in law and in fact in deciding that the fact that cheques were given for "rent" was evidence of no value and in refusing to attach any importance to it.

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(d) The learned judge erred in law and in fact in discounting the statement made by

Joseph in opposing the Defendant's application for a Special Hotel Licence, that Hotel de Paris were "sub-letting" to the Defendant, no explanation of the same, consistent with the Plaintiff's case, having been given.

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- (e) There was no finding as to the capacity in which the Defendant was in occupation of the Parisian Hotel.
- 10 (f) The learned judge was in error in stating that a copy of the alleged letter dated the 7th May, 1956, was admitted into evidence by agreement.
- (g) Even if properly admitted in evidence, the letter dated the 7th May, 1956, was ineffective to determine the Defendant's right to remain in possession of the premises.
- 20 (h) The learned judge's conclusion on the basis of the letter dated the 7th May, 1956, was inconsistent with the Plaintiff's case as pleaded.
- (i) The learned judge was wrong in his view as to the effect of the continued payment of \$250 per month after the 7th May, 1956.

30 13. In the Federal Supreme Court (Hallinan C.J. Rennie and Archer, F.J.J.) the principal judgment was delivered by Archer, J. The conclusions of the learned trial judge were upheld. With regard to the alleged letter dated the 7th May, 1956, which it was contended amounted to a notice effectively terminating the Defendant's right to remain in possession of the premises, the learned Federal judge stated (erroneously, it is submitted) that the copy of the letter was put in evidence by the Defendant, that the notice therein contained took effect after a reasonable time and that the interval between the 7th May, 1956 and the date of the issue of the Writ was in fact a reasonable time.

40 Rennie, F.J. and Hallinan, C.J. concurred.

pp.139-143.

p.143.

14. Final leave to appeal to Her Majesty in Council was granted on the 13th day of October, 1958.

p.145.

15. The Defendant respectfully submits that this

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appeal should be allowed with costs throughout and that judgment should be entered for the Defendant or alternatively that the case should be sent back for a new trial for the following, amongst other,

R E A S O N S

- (1) BECAUSE the Plaintiff failed to prove that it was entitled to possession of the premises in dispute.
- (2) BECAUSE the correct inference to be drawn from the evidence is that the Defendant is a tenant of the premises in dispute. 10
- (3) BECAUSE the Defendant's tenancy has never been determined.
- (4) BECAUSE the Defendant, if not a tenant, was and is in possession of the premises in dispute as a licensee whose licence has never been determined.
- (5) BECAUSE the learned trial judge erred in drawing a conclusion unfavourable to the Defendant on the basis that the Defendant was in arrear with payments under the Agreement dated the 1st October, 1955, in view of his having previously expressly refrained from making any finding as to whether the Defendant was in fact in arrear. 20
- (6) BECAUSE the learned trial judge's finding that none of the monthly payments of \$250 were made before the 17th February, 1956, was contrary to the evidence.
- (7) BECAUSE the learned trial judge erred in refusing to attach any importance to the fact that cheques were given for "rent". 30
- (8) BECAUSE the learned trial judge erred in failing to attach any, or any due, weight to the statements made on oath by the said Joseph to the effect that the Defendant was tenant to the Plaintiff in respect of the premises in dispute.
- (9) BECAUSE the learned trial judge made no finding as to the capacity in which the Defendant was in occupation of the premises in dispute. 40

- (10) BECAUSE both Courts below erred in taking the view that a copy of the alleged letter dated the 7th May, 1956, was admitted in evidence by the Defendant.
- (11) BECAUSE the Plaintiff failed to prove service upon the Defendant of the alleged letter dated the 7th May, 1956.
- 10 (12) BECAUSE the alleged letter dated the 7th May, 1956, was ineffective to determine the Defendant's right to remain in possession.
- (13) BECAUSE the Plaintiff's case, in so far as it was founded upon the alleged letter dated the 7th May, 1956, was inconsistent with the Plaintiff's case as pleaded.
- (14) BECAUSE the learned trial judge was wrong in his view as to the effect of the continued payment of the sum of \$250 per month after the 7th May, 1956.
- 20 (15) BECAUSE the Federal Supreme Court failed to correct the errors of the learned trial judge.
- (16) BECAUSE the alleged notice given was not a reasonable notice and there was no finding as to when the Defendant's right to remain in occupation of the premises in dispute was said to have been determined.

DINGLE FOOT.

RALPH MILLNER.

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CASE FOR THE APPELLANT

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