IN THE HIGH COURT OF AUSTRALIA. 18

Actors Equity of Australia

v.

Sinclair & another

REASONS FOR JUDGMENT.

Delivered at Sydney

on 14th November 1944

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IN THE HIGH COURT OF AUSTRALIA)
)
NEW SOUTH WALES REGISTRY)

ACTORS' EQUITY OF AUSTRALIA

v.

LINDRUM & ANOR. 14th November 1944

JUDGMENT.

LATHAM C.J.: We are of opinion that this appeal should be dismissed. We all agree that there was evidence upon which the learned trial Judge could properly find that there was a nuisance according to the ordinary standard as laid down in Walter v. Selfe, 4 De G. & S., 315 and other authorities.

The only other question which requires consideration is whether Actors' Equity, described as the landlord in relation to Miss Lindrum and also in relation to Gershon, the other defendant, is liable for the nuisance.

Liability for nuisance arising from use of land rests in general upon the occupier of the land. If, however, the owner of land allows a person to use the land as a licensee, then the owner is liable for any nuisance created by his licensee. The case of White v. Jameson, L.R. 18 Eq. 303, cited by Mr. Isaacs is an example of the application of that principle. If Gershon was a licensee of Actors' Equity then the latter is liable for the nuisance created by him.

It is argued for Actors' Equity, however, that Gershon was not a licensee,but a tenant. In general a landlord is not liable for a nuisance created by a tenant: the tenant is the occupier and is the person liable, and the landlord is free of responsibility. But if the land is let for a purpose which necessarily involves the creation of a nuisance, as in the case cited of Malzy v. Eichholz, 1916 2 K.B., 308, the landlord will be liable. It is also settled that the landlord is liable where he lets the premises "for a purpose which is likely to cause a nuisance of a particular character and such nuisance results". I read from

Halsbury 2nd Edn., Vol. 24, p. 86.

Here the evidence is that Gershon was allowed to use the second floor of the building for a night club, it being known that there would be a band and dancing. A nuisance in fact resulted.

There was some communication between Actors' Equity and Miss Lindrum as to allowing Gershon to use the second floor for a night club and an offer of £5 a week was made to Miss Lindrum in this connection to obtain her consent, which was refused.

In my opinion, these facts are explainable only upon the view that Actors' Equity knew that some disturbance to the business of Miss Lindrum might reasonably be expected if the night club were established as intended, that is to say, the position was not merely that there <u>might</u> be a disturbance to the business of Miss Lindrum, but that there probably would be such a disturbance of which complaint might legitimately be made.

Upon this view of the facts (which the learned Judge was entitled to take, and from which I see no reason to dissent) the case falls within the rule which I have cited, that the premises were let for a particular purpose, it being known that the use of them for that purpose would probably result in a nuisance, and the nuisance resulted.

In my opinion, therefore, the appeal should be dismissed with costs.

(Sgd.) J.G.L.
16/11/44.

<u>ORDER</u>: Appeal dismissed with costs.

ACTORS' EQUITY OF AUSTRALIA

v.

LINDRUM
& ANOR.

JUDGMENT. RICH J.

Assuming that the facts in this case constituted a letting or demise it appears that the letting or demise was for the express purpose of the lessee "having a night club for catering for the American non-commissioned officers" and as I understand the judgment of Roper J. His Honour found that the natural and necessary result of such letting is the nuisance complained of: cf. Harris v. James, 35 L.T. N.S., at p. 241, per Blackburn J. This finding is supported by the evidence. For these reasons I agree that the appeal should be dismissed.

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JUDGMENT.

STARKE J: I also agree. There was ample evidence that the appellant allowed the premises to be used for the purpose and in the manner in which they were so used and a nuisance was created.

IN THE HIGH COURT OF AUSTRALIA)
)
NEW SOUTH WALES REGISTRY)

ACTORS' EQUITY OF AUSTRALIA v. LINDRUM & ANOR.

14th November 1944.

JUDGMENT.

DIXON J.: I agree. I think that it is of some importance to remember that in this case we are not dealing with adjoining owners of different pieces of land on the same horizontal plane, but we are dealing with occupiers of floors of the same building one above the other and occupiers moreover who derive title through the same owner.

The plaintiff was already in possession under a lease which contemplated the use of her premises as a billiard saloon. The defendant was then let into possession of the floor above the plaintiffs under a lease and then sub-let it, as it is said, for the purpose of a night club. It appears to me to be abundantly clear that the defendant knew, when it sublet the premises for that purpose, that the use of premises for a night club, having regard to their nature and to their particular structure, must in the ordinary course cause a nuisance to the proprietors of the billiard saloon. I think that the defendant contemplated it as a thing which was almost inevitable, and on those facts I think there is no difficulty in point of law.

It does seem that the law has not quite settled down between two possible views of the responsibility of a landlord for nuisance; that is between regarding his responsibility from the point of view of the law of agency in tort and regarding it from the point of view of the duty of the owner or occupier of land not to exercise any right of property or possession so that a nuisance arises. Probably it will be found that a landlord is liable sometimes under one head and sometimes under the other.

IN THE HIGH COURT OF AUSTRALIA

NEW SOUTH WALES REGISTRY

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14th. November 1944

JUDGMENT.

Williams J: I agree. I think that on the whole of the evidence the appellant must have known that the natural and probable consequence of letting the premises for the purpose of a night club would be to create a nuisance. Under those circumstances the appellant must be taken to have authorised its creation. That is sufficient, in my opinion, to support His/Honour's judgment and to make the appellant liable.