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Landlord and Tenant

Marshall I. Nurenberg

agreement. The court of appeals held that the judgment for the defendant rendered by the municipal court was justified on the basis of a finding of fact that the contract was not in force and effect at the time plaintiff's employment was severed.

EDWIN R. TEPLE

LANDLORD AND TENANT

Lease and License Distinguished

The importance of correctly delineating the legal relationship between parties was never better illustrated than in the case of *Di Renzo v. Cavalier.*[1] One Conti entered into an agreement with the defendant to use the latter's premises for a period of four and a half hours for a wedding reception. Conti agreed to employ and pay defendant's "regular officer of the law," to have him "on duty during the party" and to employ and pay defendant's regular check room attendants. The pay of these employees was specified in the agreement. During Conti's occupancy, a portion of the ceiling fell and injured plaintiff, a guest at the reception. Plaintiff brought a negligence action for his injuries which resulted in a directed verdict for defendant. The court of appeals reversed and remanded,[2] and the Supreme Court of Ohio affirmed the decision of the court of appeals.

Obviously if the relationship between Conti and defendant was that of landlord and tenant, then defendant would be in the position of a lessor out of possession and control and therefore not liable to plaintiff, who occupied the status of a guest of Conti.[3] It would also follow from these same relationships that plaintiff as a social guest of Conti would not have a cause of action against Conti.[4]

However, both the court of appeals and the Supreme Court recognized the relationship between defendant and Conti as licensor and licensee, rather than that of landlord and tenant. The Supreme Court noted that the presence of defendant's "officer of the law" retained in defendant a measure of control. Also, and most important, Conti's possession was exclusive only so far as necessary to hold a wedding reception and went no further.

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[1] 165 Ohio St. 386, 135 N.E.2d 394 (1956).

[2] DiRenzo v. Cavalier, 101 Ohio App. 227, 139 N.E.2d 77 (1956).

[3] Brown v. Cleveland Baseball Co., 158 Ohio St. 1, 106 N.E.2d 632 (1952), especially syllabi 2 and 3.

[4] Scheibel v. Lipton, 156 Ohio St. 308, 102 N.E. 2d 453 (1951).

A leasehold creates some estate in the premises, subordinate to the title of the landlord, but superior in the right of possession to the entire world during the term of the lease.[5] A license, on the other hand, involves a possessory right only to the extent necessary to carry out the purposes of the license.[6] Hence the licensor still retains rights of possession. It is interesting to note that although as to Conti, plaintiff is a social guest, as to defendant he is a business invitee.[7]

Rent Payments Under Defective Lease — Remedies

The difference between legal and equitable relief when there is entry and payment of rent under a defectively executed lease is thoroughly discussed in the court of appeals decision in the case of the *Walter C. Pressing Co., v. Hogan.*[8] The original document was a lease for one year, 1943-44, with options to renew for two additional two year terms. There was full compliance with the appropriate statutes on execution[9] and recording.[10] Both options were exercised. However, in 1946 a second document was executed, called a renewal lease, for five years from the expiration of the 1943 lease. This latter document was not executed as required by statute and not recorded. The defendant Hogan continued in occupancy, paid the stated rent, and expended approximately fifteen hundred dollars on improvements. In 1951 the defendant Lawton executed a lease for a three year term to plaintiff at a much higher rent. Plaintiff sought a declaration of its rights. Defendant Hogan prayed that her lease be declared to be in full force and effect until 1953.

Had legal relief been sought by Hogan the lease would be from month to month.[11] In equity, however, a lessee in possession and paying rent under a defectively executed lease is entitled to hold possession for the full term of the lease, even though such a judgment nullifies the plain provisions of the statute.[12] Thus Hogan was declared to be entitled to possession until 1953 at the rent recited in her 1946 renewal lease. It is interesting to note that the court of appeals construed the phrase "for a period of five years from the expiration date of the present lease" in the

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[5] Pitts v. Cincinnati Metropolitan Housing Authority, 160 Ohio St. 129, 113 N.E.2d 869 (1953), especially syllabus 2.

[6] 32 AM. JUR., *Landlord and Tenant* § 5 (1941).

[7] Brown v. Cleveland Baseball Co., 158 Ohio St. 1, 106 N.E.2d 632 (1952).

[8] 99 Ohio App. 319, 133 N.E.2d 419 (1954)

[9] OHIO REV. CODE § 5301.01.

[10] OHIO REV. CODE § 5301.25, construed as to leases in *Riley v. Rochester,* 105 Ohio St. 258, 136 N.E. 919 (1922)

[11] Wineburgh v. Toledo Corp., 125 Ohio St. 219, 181 N.E. 20 (1932), especially syllabus 1.

[12] OHIO REV. CODE § 5301.01.

renewal lease to mean commencing from 1948 or after the expiration of both options in the 1943 lease.

Subrogation Rights of Insurer — Effect of Lease

The effect of a leasehold agreement upon the subrogation rights of a fire insurance carrier was before the court of appeals in the case of *United States Fire Ins. Co. v. Phil-Mar Corp.*[13] The insured, Spang Baking Co., leased to defendant. Because of the more hazardous business of defendant, the lease provided that lessee pay the additional fire insurance premiums over the lessor's regular rate. The lease further excepted loss by fire in the delivery and surrender clause. The lessee did in fact occupy the premises and paid the additional premiums, so that the insurance carrier received the benefit of the higher rate. Subsequently and during the leasehold term and possession by lessee, the property was destroyed by fire by reason of the negligence of lessee. The policy benefits were paid to the lessor, and the carrier then commenced a subrogation suit against lessee. The common pleas court granted a motion for a directed verdict in favor of the lessee which was affirmed by the court of appeals.

The court of appeals reasoned that the lease obviously contemplated that the lessor should carry adequate fire insurance at the required rate for the business of lessee, and that lessee should be exempt from loss by fire which includes a fire negligently started. Inasmuch as the rights of the subrogating fire insurer can rise no higher than those of the lessor insured, the insurer was relegated to the intent of the parties as manifested by their lease. This decision seems eminently sound because had the lessee been the named insured there would have been no basis for a subrogation action, and the insurer received the full rate for the risk insured.

Forfeiture Upon Failure to Exercise Option in Lease

The court of appeals' decision in *Woodward v. Wagner*[14] is worthy of note as it illustrates that the courts will sustain a reasonable forfeiture provision. The lease recited that for a payment of fifteen hundred dollars, the lessee could exercise an option to purchase the real estate for a total price of eleven thousand five hundred dollars, i.e. for an additional ten thousand dollars. If the lessee did not choose to exercise the option, the fifteen hundred dollars was deemed forfeited. The lessee did not exercise the option and brought suit to recover the forfeiture. A demurrer was sustained.

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[13] 131 N.E.2d 444 (Ohio App. 1956). This case is also discussed in the INSURANCE section, *supra.*

[14] 131 N.E.2d 694 (Ohio App. 1955)