

ROYAL COURT

57.

24th April, 1990

Before: F.C. Hamon, Esq., Commissioner, and  
Jurats Bonn and Gruchy

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The Attorney General

- v -

Catherine Lorna McIntosh

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Infraction of paragraph 1(a) of  
Article 14 of the Housing  
(Jersey) Law, 1949.

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Advocate C.E. Whelan, Crown Advocate,  
Advocate A.P. Begg for the Defendant.

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JUDGMENT

COMMISSIONER HAMON: Any breach of the Housing Law is serious in a situation which becomes more serious year by year. That the legislature has recognised this is shown by the fact that on the 10th February, 1989, the maximum fine for an offence of this nature was altered from £5,000 to an unlimited amount.

For this reason the Crown Advocate, Mr. Whelan, has asked us to impose a fine of £3,000 for this particular offence.

The offence that we have dealt with this afternoon was serious and was eventually admitted. Miss McIntosh purchased through a company of which she appears to be the sole owner the unexpired portion of a lease at No. 2 Trinity Road, St. Helier, which is the Forest Café. There were three conditions imposed:

1. that there shall be no diminution in the existing area or number of units of private dwelling accommodation upon the land;
2. that the existing 2 units of private dwelling accommodation at the property shall not, without the consent of the Committee, be let unfurnished to, or be occupied by any persons other than those approved by the Committee as being persons of a category specified in Regulation 1 (1)(a), (b), (c), (d), (e), (f), (g) or (h) of the Housing (General Provisions) (Jersey) Regulations, 1970, as amended, and who will occupy the accommodation as their sole or principal place of residence;
3. that in the event of the creation of any further units of private dwelling accommodation upon the land, such accommodation shall not, without the consent of the Committee, be occupied other than by persons specifically approved by the Committee as being persons of a category specified in Regulation 1 (1)(a), (b), (c), (d), (e), (f), (g) or (h) of the Housing (General Provisions) (Jersey) Regulations, 1970, as amended, and who will occupy the accommodation as their sole or principal place of residence;"

In one of the units was a qualified couple. They were approached by Miss McIntosh and told that they had to give her some accommodation. They complained to the Housing Department and they were eventually evicted from that accommodation.

We saw a diary note from Mr. Harris, Housing Law Enforcement Officer, which shows that he clearly spoke to Miss McIntosh on this matter and warned her that what she was doing was unlawful and that what she intended to do was unlawful and that she should not continue in that course. She appears from the diary note to have accepted his advice.

Various tenants were found and eventually a Mr. Le Monnier took the flat and Miss McIntosh took a room with him which was made available to her. She paid £25 for that room and that sum eventually filtered back into her company.

Mr. Begg explained with some force that she did not understand the import of what had been explained to her. She thought that if she could get someone to accept her as a lodger before they were given the tenancy then that would be acceptable to the Housing Department and would not be a breach of the conditions imposed by the Housing Committee. It is quite clear that she had no such right to occupy; she has admitted that at a late stage.

We have listened very carefully to everything that Mr. Begg has said and we are prepared to accept, on what he has told us, that she did not fully understand the legal implications of what she was doing. Had we thought otherwise our feelings would not have been tempered with mercy.

We can see the desperation that led her to set up this scheme. She had lost her vehicle, we must say through her own indiscretion, and her own rent of the property that she was tenancing had been increased. But she could have taken legal advice at any time and particularly before she took the assignment of the lease. Or she could indeed at any time have seen one of the Housing Law Officers who would have explained matters to her.

Our problem however is that we have looked very carefully through her affidavit. It cannot be the purpose of this law that if someone cannot possibly pay the fine that we impose there is no alternative but for them to go to prison. And on the affidavit that we have received we cannot see that there is any hope that Miss McIntosh can pay very much towards any fine that we are likely to impose.

We view the matter as serious; we take on board exactly what the learned Crown Advocate has said and we sympathise with everything that he has said and this must in no way be taken as an encouragement to anybody else that this Court is viewing infractions of the Housing Law with tolerance. But because of the specific lack of funds of this particular accused we are going to make an exception and we are going to fine her £1,000 which she will pay at the rate of £50 per week. That is £1,000 or in the alternative six weeks'

imprisonment. Again, Mr. Whelan, we sympathise exactly with what you say about the costs of the exercise but again we cannot see the purpose of imposing hefty costs on someone who will not be able to pay them, from the affidavit of means which we have before us and which was accepted. Again, because this is an exceptional case we will impose costs in this matter of £300.

Authorities referred to:

- A.G. -v- Glendale Hotel (Holdings) Limited (10th February, 1989) Jersey  
Unreported.
- A.G. -v- Lillian White, (née Gilpin) (23rd June, 1989) Jersey Unreported.
- A.G. -v- Le Hameau Holdings Limited (11th August, 1989) Jersey  
Unreported.
- A.G. -v- 33, Chevalier Road Limited (22nd September, 1989) Jersey  
Unreported.
- A.G. -v- Harven Property Company Limited (20th October, 1989) Jersey  
Unreported.
- A.G. -v- M.J. Vautier et uxor (20th October, 1989) Jersey Unreported.
- A.G. -v- Langston Investments Limited (23rd March, 1990) Jersey  
Unreported.