

JERSEY / JUDGMENT

AG -v- Meyer and Ors [2007]

JRC 216 (16 November 2007)

[2007] JRC 216

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JUDGMENT

THE Commissioner: 1. On 13 th February, 2003, the Housing Committee issued a consent to Mrs Hall to purchase a residential house, 87 Clos de Sable, St Brelade. The Housing consent contained a condition which could not be clearer. It is in the standard form. "The property shall be occupied by the purchaser as her sole or principal place of residence or shall be let unfurnished to or otherwise occupied by persons approved by the Committee as being persons of a category specified in Regulation 1(1) A - J of the Housing General Provision (Jersey) Regulations 1970 as amended." 2. Part of the property is a one room unit on the ground floor which is capable of being let separately. In July 2003, the year that the property was purchased, the Salty Dog Bar and Bistro took over the lease of the property. In December 2003 the Salty Dog Bar and Bistro was given permission to house Mr Meyer and his family. The Housing consent could not be clearer:- "(1) That the dwelling accommodation on the land should be used exclusively or mainly for residential purposes, and there shall be no diminution of such existing area of private dwelling accommodation; (2) that the property shall be occupied by Mr John Edward Meyer on a service basis with a duration of his full time employment with the Salty Dog Bar and Bistro as head chef such a period not exceed December 2006 or by persons specifically approved as occupiers by the Committee." 3. Mr Meyer was the chef of the Company and a short lease application was made and granted which enabled Mr Meyer and his family to occupy the property for three years from December 2003. 4. In May 2007 some four years later the Housing Department found that living in the property was a Polish lady who paid rental of £280 per month to Mr Meyer and Mr Meyer and his family who paid £1,300 per month to Mrs Hall. 5. It is clear that the three year period ended in December 2006. Mr Meyer ended his employment with the company in March 2007. Mr Meyer believed, wrongly that, although no longer employed by the company his J category status allowed him to remain in the property until his housing qualifications came to fruition in July 2007. 6. Mrs Duffy represented the company and was responsible for the administration of it. She had apparently explained the position to Mr Meyer who had not seen the lease or indeed the Housing Consent. He admits that he was unaware that his J category licence expired in 2006. It is clear that he should have been aware that he could not occupy the property after December of that year. 7. Mrs Hall is now 68 and is retired but she owns a number of properties in the Island which are rented. She is well aware of the nature of the Housing restrictions. Mrs Duffy is the

administrator of the company which is jointly owned with her husband and must have known the terms of the Housing Consent. She did nothing after Mr Meyer left the company to ensure that he either occupied the property with Housing consent, or vacated the property. 8. The period of times of the infractions varies. Mr Meyer was in unlawful occupation of a property for 9 months from the 31 st December, 2006 to the date of vacating it in October 2007. Mrs Hall as landlady must have known the situation. As I have said Mrs Duffy did not take any action when Mr Meyer ceased to be employed by the company in March 2007. 9. We have had careful regard to all the cases but particularly to the AG -v- Muren and Peters 2000/166, which deals in detail with illicit profits. As the Court in that case said: "We do not expect the Crown nor the defence, to engage in complicated exercises to assess the existence or extent of any illicit profit. If it is to be taken into account as an aggravating factor, it should be reasonably plain from the facts. " 10. The Housing Office has produced a Schedule of Illicit Profit that is the profit made while living in the flat without consent. Mr Meyer was there for 9 months and paid £11,700 to Mrs Hall. He also received £2,370 from his lodger. That is what the Housing Department refers to as illicit profit, but Advocate Temple has pointed out that he did pay all the outgoings on the property. The owner of the property could have let the property to a qualified person and in accordance with AG -v- Muren and Peters she did not make an illicit profit. But the judgment goes further than that. Mr Meyer could have deprived a person qualified under the Housing Law from making use of the property. 11. Mr Meyer was undoubtedly aware of that. If Mrs Duffy and the company had acted correctly the position would never have arisen. It may be relevant that the property is at the present time still un-let. 12. What of the mitigation? Apparently Mr Meyer owes some £9,000 as a bad debt. He is about to set up a business and he is without a doubt an excellent chef. He tells us that he would not have survived in the property had he not let it to the illicit lodger. But he did at one stage make application to the Undertaking and Regulations Department which was of course insufficient for this prosecution. Mrs Duffy was away in Australia for Christmas and the New Year and had other things on her mind. Mrs Hall said that she employed an agent who was only a letting and not a managing agent. She did not, to do her credit, put the rent up at any time. 13. We have some sympathy for all the defendants, for these are offences of omission and not commission. We accept and are very grateful to all counsel for their very detailed arguments. This was negligent failure as Advocate Hoy said and we feel in the circumstances that the fine is too high. Perhaps Housing might consider reminding people who have limited occupation of property when their licence is near to expiry. This is an exceptional case on its merits and we would not wish this case to establish any precedent. We have to say that the Housing Law must be maintained. We have obviously noted the references and the remorse and we feel that Mr Meyer is the least culpable of those present before us to day. 14. Taking into account all the circumstances, including the periods of unlawful occupancy, the defendants' role in each case, the profit and benefit and, of course, the available mitigation, we would move as follows. Mr Meyer we are going to fine you £1,000 or 2 week's imprisonment. Mrs Hall a fine of £4,000 or 2 months' imprisonment and Mrs Duffy a fine of £1,500 or 1 month's imprisonment and the company a fine of £1,500. We feel the costs incurred in bringing this matter before the Court of £750 each is reasonable and we will allow that. Authorities AG -v- Muren and Peters 2000/166.

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Prepared on 28 October 2026 · Esheria