

SOCRATES ATHANASIOU AND }  
OTHER ..... }

APPELLANTS;

1963  
\*May 29  
Dec. 16

AND

PALMINA PULIAFITO COMPANY }  
LIMITED AND OTHER ..... }

RESPONDENTS.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH, APPEAL SIDE,  
PROVINCE OF QUEBEC

*Real property—Lease—Rescission and damages—Moving picture theatre—Lessor's obligation to provide facilities required by by-laws—Failure to do so—Code Civil, arts. 1612, 1641.*

In October 1956, the respondent company leased from the appellants, for a period of ten years, a moving picture theatre in Montreal. In February 1957, the lessee was advised by the City that its application for a permit, required to operate a theatre, was refused on the ground that the premises did not have the washroom and toilet facilities required under the City's by-laws. The lessee took action for cancellation of the lease and damages, and the landlord sued for arrears of rent. The lessee's action was dismissed at trial, and the landlord's maintained. Both judgments were reversed on appeal. The landlord appealed to this Court.

*Held:* The appeals should be dismissed.

The premises were suitable for use only as a theatre and were leased as such. It was established that they were not equipped with the facilities required under the by-laws. The obligation to provide these facilities, without which no permit could be issued, was one imposed upon the landlord and not upon the lessee. The landlord had failed to perform that obligation, and the lessee was therefore entitled to rescission under art. 1641(2) of the *Civil Code*.

APPEALS from two judgments of the Court of Queen's Bench, Appeal Side, Province of Quebec<sup>1</sup>, reversing judgments of Deslauriers J. Appeals dismissed.

*R. Turgeon, Q.C.*, and *Harry H. Kliger, Q.C.*, for the appellants.

*F. Aquin*, for the respondents.

The judgment of the Court was delivered by

ABBOTT J.:—These two appeals are from judgments of the Court of Queen's Bench<sup>1</sup> unanimously reversing two

\*PRESENT: Taschereau C.J. and Cartwright, Fauteux, Abbott and Hall JJ.

<sup>1</sup> [1961] Que. Q.B. 806.

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judgments of the Superior Court, the one dismissing an action taken by respondents asking for cancellation of a lease and damages, the other maintaining an action by appellants claiming arrears of rent and reimbursement of certain expenses. The two actions were tried together, the same facts being involved. At the hearing before us, leave to appeal to this Court was granted in the action in which appellants were the plaintiffs, the amount in issue in that action being less than \$10,000.

The facts are fully recited in the reasons of Hyde J. who delivered the unanimous opinion in the Court below. For the purpose of this appeal they can be shortly stated.

In October 1956, the corporate respondent leased from appellants, for a period of ten years, a moving picture theatre in the City of Montreal which had previously been operated for some forty years by one of the appellants. Among other conditions the lease provided that the tenant was to take the premises in their actual state and condition and was to make all tenant's repairs during the term of the lease. The individual respondents intervened in the lease to guarantee payment of the rent and the fulfilment of the other obligations of the tenant thereunder.

After operating the theatre for some two months the corporate respondent closed it in January 1957, after having complained that the heating system was defective and that the building was infested with rats.

A permit from the City of Montreal is required for the operation of a moving picture theatre in that city, and appellants had held such a permit for a number of years. Any transfer of such permit requires the approval of the city authorities. On February 18, 1957, the corporate respondent was advised in writing by the city that its application for a permit was refused. The ground for such refusal appears to have been that the theatre did not have the washroom and toilet facilities required under the city by-laws for such an establishment.

On March 27, 1957, the respondents took action against appellants asking for cancellation of lease, reimbursement of expenses incurred and damages. In the meantime, on February 26, 1957, appellants had sued the respondents claiming unpaid rent and other items. Subsequently on

September 6, 1957, they filed an incidental demand claiming additional rent and other payments, their total claims amounting to \$3,116.77. As I have said, the learned trial judge dismissed respondents' action to cancel the lease and maintained appellants' action and incidental demand to the extent of \$3,106.77, both judgments being reversed on appeal.

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The judgments in the Court below were based upon the sole ground that since the theatre did not have the sanitary facilities required by law, the appellants had failed to perform one of their principal obligations as lessors, namely, to deliver the thing leased in a fit condition for which it had been leased (art. 1612 of the *Civil Code*), and that respondents were therefore entitled to rescission under para. 2 of art. 1641 of the *Civil Code*.

The premises were suitable for use only as a theatre and were leased as such to the corporate respondent. Although appellants denied this in their plea, it was established that the premises were not equipped with the washroom and toilet facilities required under the city by-laws. Without a permit the premises could not be used legally as a theatre and the obligation to provide the required washroom and toilet facilities was one imposed upon the owners and not upon the tenant. In my opinion the respondents were entitled to ask for cancellation of the lease by reason of the failure of appellants to perform that obligation.

For the foregoing reasons as well as for those expressed by Hyde J. in the Court below with which I am in agreement, I would dismiss both appeals with costs.

*Appeals dismissed with costs.*

*Attorney for the appellants: Harry H. Kliger, Montreal.*

*Attorneys for the respondents: Long & Aquin, Montreal.*