17 pages.

ROYAL COURT
Samedi Division 160.

11th August, 1995

Before: The Bailiff and
Jurats J.J.M.Orchard and C.L. Gruchy

Between	Harry Selby and Janet Mary Ann Selby (née Hankin)	Plaintiffs
And	Reginald Edmund George Romeril (by original action)	Defendant

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And

Between	Reginald Edmund George Romeril	Plaintiff
And	Harry Selby and Janet Mary Ann Selby (née Hankin) (by counterclaim)	Defendants

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Advocate N.M. Santos-Costa for the Plaintiffs
Advocate J.D. Kelleher for the Defendant

JUDGMENT

THE BAILIFF: Harry Selby and Janet Mary Ann Selby née Hankin (to whom we shall refer jointly as "the plaintiffs") are the owners of a property at Havre des Pas called "Palm's Guest House". Mrs. Selby (to whom we shall refer as "the second plaintiff") is responsible for dealing with reservations, the supervision of staff and the payment of staff wages. Mr. Selby, (to whom we shall refer as "the first plaintiff") and who was at one time employed in the building trade, deals with the maintenance of the property and is also responsible for the financial side of the business.

Reginald Edmund George Romeril (to whom we shall refer as "the defendant") is the owner of the adjoining property called the "Havre des Pas Hotel". This property had been let for many years to a tenant called Dale. This tenancy came to an end in March, 1990. The defendant sought to find another tenant and placed

advertisements in the local newspaper. It appears that these advertisements came to naught. At some stage the plaintiffs and the defendant began negotiating with a view to the letting of the the Havre des Pas Hotel (to which we shall refer as "the property") to the plaintiffs and to the conduct by them of both adjoining properties as a single hotel business. There is a dispute as to who made the first approach but nothing really turns upon that. What is agreed is that the plaintiffs were shown around the property by the defendant. It had, by all accounts, been left in a rather dilapidated state by the former tenant, Mr. Dale, who, it was said, had a fully-repairing lease. The plaintiffs expressed interest in taking a lease of the property and the defendant produced a draft hand-written agreement. The terms were agreed and that draft was later typed out and was signed by the plaintiffs and the defendant and dated 23rd June, 1990. Neither party, unfortunately, took legal advice before signing the agreement. It will be necessary to examine the agreement in more detail in due course, but for present purposes, it is sufficient to record that it created a lease for the period of some two and a half years terminating on 31st December, 1992. A premium of £7,500 was payable, equal amounts of £2,500 to be paid on 31st December during each year of the lease. The defendant was, however, "favourably disposed" to waiving part or all of the first payment, if it could be shown that an equivalent amount had been spent on replacing unsafe electrical wiring and/or renovating bathrooms and toilets. The rent for the second year (1991) was expressed to be £16,000 and for the third year (1992) £17,000, in each case payable in equal quarterly instalments. There was to be no rent for the first six or seven months of the lease but the plaintiffs agreed to carry out a refurbishment of the kitchen and adjoining stillroom to the value of a minimum of £10,000. There was also an important provision which purported to create some form of option for a further lease of at least nine years. Although at the pleading stage considerable reliance was placed on this provision, by the time the action came on to trial, both parties agreed that it was without any legal effect.

Regrettably, relations between the parties quickly soured and by the end of 1992, they were hardly on speaking terms. In November, 1992, the first plaintiff delivered to the defendant a bundle of receipts showing particulars of works carried out at the property by him, and indicated that a discussion was necessary. A further bundle of receipts or statements was delivered in February, 1993. Notwithstanding that the lease had not been renewed, the plaintiffs remained in occupation of the premises during 1993 and indeed were still in occupation of part of the property at the date of the trial. At first, the defendant appears tacitly to have accepted the continuation of the tenancy. On 23rd November, 1993, however, the defendant's legal advisers wrote to the plaintiffs' lawyers, informing them that instructions had been received to institute eviction proceedings. On 7th December, 1993, a summons was served upon the plaintiffs, summoning them to appear

before the Petty Debts Court under the Lois (1946 à 1948) concernant l'expulsion des locataires réfractaires. On 8th December, 1993, the plaintiffs responded by instituting proceedings before this Court alleging a breach of contract by the defendant in his failure to grant the plaintiffs a further lease. The Order of Justice was signed by Crill, Bailiff and contained an interim injunction restraining the defendant from pursuing the eviction proceedings before the Petty Debts Court. The prayer of the Order of Justice sought an order that the plaintiffs might, in terms, be granted a further lease or, in the alternative, damages both in respect of works carried out by the plaintiffs and generally. By the time the action came on for trial, however, the plaintiffs were no longer seeking a further lease, but were seeking damages alone. It is not clear when they decided not to pursue their claim for a further lease on the basis of which the interim injunction was granted.

We return now to the seeds of the dispute. The first plaintiff told us that he had first been shown around the property in or about March, 1990. He had some previous knowledge of the property because he had carried out some work on the roof, as well as other minor works for the previous tenant, Mr. Dale. It was in a dilapidated state and the defendant seemed irate about it and told the first plaintiff that the previous tenant, Mr. Dale, would pay for the costs of remedying his neglect. The first plaintiff said that he was "strapped for cash" and was in no position to take on any large commitment. He told us that he trusted the defendant and was satisfied that the costs of the remedial work would be claimed from the former tenant. He accordingly signed the agreement of lease. Within five days of signing the agreement, the first plaintiff told us that he had contacted the Jersey Electricity Company and asked for the property to be re-connected to the mains supply. He was apparently advised by the Jersey Electricity Company that some minimum works needed to be done but that major re-wiring could wait until the end of the tourist season. The first plaintiff accordingly instructed an electrician, a Mr. Allman, to carry out the minimum works required. There is a small inconsistency here in that the account of Mr. Allman for this work is dated 15th June, 1990, whereas the date of the agreement of lease was 23rd June. We think that what probably happened is that the parties agreed terms late in May or early in June, 1990, on the basis of the hand-written document, following which the electrical work was commissioned and completed. The signing of the typewritten agreement followed a few days later. The first plaintiff told us, however, that it was the carrying out of this electrical work which first caused him unease about the true state of the property. He saw that there were major problems and he suggested to the defendant that a surveyor's report be obtained. The defendant agreed and commissioned Mr. Stuart Coley, who was then an associate of the Royal Institute of Chartered Surveyors. Mr. Coley produced a report on 1st July, 1990 which was made available to the first plaintiff. The report made it clear

that Mr. Coley had produced an earlier report on the condition of the property in 1985. The first plaintiff asked Mr. Coley for a copy and saw that it recorded defects, in particular the cracked concrete column supporting the fire escape, which was still in existence in 1990. Recalling the shock said to have been demonstrated by the defendant on seeing these defects when they first toured the property together, the first plaintiff began to doubt whether that shock was genuine. He decided to be very careful in his dealings with the defendant. The seeds of mistrust had been sown. The first plaintiff did not, however, remonstrate with the defendant, but kept his feelings to himself. The defendant told us that he had ordered the survey to see to what extent Mr. Dale had put right the defects revealed by the 1985 survey, although he conceded that this might have been at the instigation of the plaintiffs. It does seem that the existence of the 1985 survey was not disclosed to the plaintiffs by the defendant when they were negotiating to enter the lease.

The Court heard evidence from Mr. Coley which, to an extent, supported the statement of the first plaintiff that Mr. Dale was expected to pay for the remedial works. Mr. Coley gave evidence that the defendant had mentioned in passing that some works would need to be carried out by Mr. Dale.

Be that as it may, the first plaintiff told us that the written agreement of lease did not include all the terms agreed between the parties. There was, he said, a supplementary or collateral agreement that the works shown by the survey report and by the preliminary electrical repairs to be necessary would, in part at least, be paid for by the defendant. The first plaintiff told us that the agreement was that he would clean up the property, decorate the rooms and (pursuant to the written agreement) provide en suite facilities and attend to the kitchen; but the external problems were to be charged eventually to Mr. Dale. The first plaintiff said that he acted as the unpaid agent of the defendant in dealing with these external problems and that he agreed with the defendant that he would do ancillary work in order to help to keep the costs down. He said that the defendant told him to keep records so that detailed invoices could be submitted to Mr. Dale. He asserted that at that early stage of the lease, the defendant was visiting the property about once a week and was well aware of all the work which the plaintiffs were carrying out. Indeed, in cross examination, the first plaintiff at first claimed that the defendant authorised every single job that was carried out; later, however, he qualified that by saying that he regarded the survey report as his authority to get done all the jobs shown to be necessary. He explained his occasional seeking of the express approval of the defendant as being brought about by the defendant's occasional specific request for a quotation.

The first question which the Court has to decide therefore is whether there was a supplementary or collateral agreement between

the parties whereby the defendant agreed to pay the costs of all the work shown to be necessary by the survey report and the preliminary electrical repairs.

The defendant denies that there was such an agreement. He told us that he was not "shocked" by the condition of the property when the parties looked at it together; that was an exaggeration. He was "annoyed". He conceded, however, that he mentioned that he might have to take Mr. Dale to Court. He told us that later on he had come to reflect that it might nevertheless be difficult to extract money from his former tenant, and he had not in fact tried to do so. In general, he asserted that the agreement between the parties was embodied in the written agreement of lease which he had drafted. The only defect in the written agreement was that it did not specify the number of en suite bathrooms which the plaintiffs had agreed to install. The defendant said that the number was nine, i.e. three per annum. The first plaintiff denied that there was any agreement as to the number, although he agreed that he had installed three en suite bathrooms during the first year of the lease. The defendant did however tell us that until the plaintiffs moved in he was unaware of the depth of things which needed to be done. He denied that he had agreed generally to pay for other works, although he conceded that he might have said that he would pay for the major items which were necessary. He thought that the first plaintiff was a clever wily character and he certainly did not agree that he would carry out work which resulted from the survey. It is not clear exactly when the defendant formed this view of the first plaintiff's character, but one incident seems certainly to have played its part. In early 1991, Mr. Hans Cook carried out some decorating work at the property following the re-wiring required by the Jersey Electricity Company. The first plaintiff told us that he pitched in with the man sent down by Mr. Cook, and did half the work. Subsequently, he paid Mr. Cook £600 and the mate £250. He procured however a blank sheet of Mr. Cook's headed paper and the second plaintiff typed in the work which had been carried out dating it May, 1991. But the figures which were included were £750 for labour and £285 for materials, making a total of £1,035, as against the £850 actually paid to Mr. Cook. The first plaintiff explained this by saying that it was done for convenience; he could have charged separately for his work and for the materials, but it was easier to record the total amount on Mr. Cook's statement of account. There was another similar incident involving the account of Mr. John Hughes, a tiler, who had done work in the kitchen and the food store.

The defendant conceded that he did pay for some work carried out at the property. Indeed between January, 1991 and June, 1993 he expended £25,980.34p on sundry accounts. These accounts related to:-

(a) Work carried out by S.G.B. to cure rot below a bathroom floor and above the dining room early in the term of the lease;

(b) External rendering of the walls;

(c) Electrical re-wiring;

(d) Replacement of the roof of the original building, and work on the kitchen and dining-room roof;

(e) The replacement of several windows.

In respect of much or even most of this work, the initial suggestion was made by the first plaintiff, who in some cases organized the work, but the defendant agreed that the work should be done. He explained that he paid for the work either because it related to the fabric of the building or because it related to long-standing problems.

The defendant denied that he had agreed to pay for other work carried out by the plaintiffs which totalled some £30,000. But he conceded that he was aware that at least some of this work was being done. There was argument between the first plaintiff and the defendant about the work being done in the kitchen by Geoff Barnard Shopfitting Limited which the defendant thought to be too costly. Again, the defendant was aware of work being done to the front veranda fascias and gutters; the defendant told us that he knew that some attention was needed, and he would have agreed to pay a reasonable amount. On seeing the account, however, he noticed that the labour of three men had been charged and he was adamant that only two men had ever been seen working on the job. On the other hand, a study of the account shows that the third man did not work a full day and it seems at least possible that the defendant visited the property at times when only two men were actually working on the site.

The defendant complains that the plaintiffs did not pay the rent at the due time or in some instances at all. This is admitted by the plaintiffs. The first plaintiff told us that he could not afford to pay the rent and at the same time carry all the expenditure on the repairs which he was undertaking. In respect of the period of the lease, rental totalling £33,000 was due, together with £7,500 for ingoing. Only £24,500 has been paid by the plaintiffs, but the defendant concedes that the expenditure on repairs reduces the ingoing to £5,000. The outstanding rent due by the plaintiffs for the period of the lease is therefore £8,500 and the outstanding ingoing is £5,000, making a total of £13,500.

What then is the law applicable to the first question of whether there was a supplementary or collateral contract as to the payment of the costs of repairs and renovations? Mr. Kelleher, for

the defendant, submitted that there was no contract. He referred us to Pothier.: Traité des Obligations, Part I Chapter I at paragraph 2:

> *"Il est de l'essence des obligations, 1° qu'il y ait une cause d'où naisse l'obligation; 2° des personnes entre lesquelles elle se contracte; 3° quelque chose qui en soit l'objet".*

It is true that Pothier has often been treated by this Court as the surest guide to the Jersey law of contract. It is also true, however, that Pothier was writing two centuries ago and that our law cannot be regarded as frozen in the aspic of the 18th century. Pothier was one of those authors upon whom the draftsmen of the French Civil Code relied and it is therefore helpful to look at the relevant article of that Code. Article 1108 of the Code provides:

> *"Quatre conditions sont essentielles pour la validité d'une convention:*
>
> *Le consentement de la partie qui s'oblige;*
> *Sa capacité de contracter;*
> *Un objet certain qui forme la matière de l'engagement;*
> *Une cause licite dans l'obligation."*

In our judgment it may now be asserted that by the law of Jersey, there are four requirements for the creation of a valid contract, namely

(1) consent;

(2) capacity;

(3) an *"objet"*; and

(4) *a "cause"*

Counsel for the defendant submitted that there was here no *"objet"*. He referred us again to Pothier *op cit* Part I Chapter I paragraph 53:

> *"Les contrats ont pour objet, ou des choses que l'une des parties contractantes stipule qu'on lui donnera, & que l'autre partie promet de lui donner; ou quelque chose que l'une des parties contractantes stipule que l'on fera, ou*

qu'on ne fera pas; & que l'autre partie promet de faire, ou de ne pas faire."

In essence, the ***objet*** of a contract, (or more precisely the obligation which the contract creates) is the content of what the party undertakes. As to the content of the undertaking it is the rule that it must be sufficiently certain.

Pothier *op cit* Part I Chapter I paragraph 137 states:

"Pour qu'un fait puisse être l'objet d'une obligation, il faut aussi que ce que le débiteur s'est obligé de faire soit quelque chose de déterminé".

We now turn to apply these principles to the facts of this case. We do not doubt that there was some discussion and indeed agreement between the parties as to the necessity of works of repair and renovation outside that which was agreed in writing. This is clear from the fact that the defendant did in fact sanction and pay for some such repairs and renovations. But we do not believe that there was ever any clear understanding as to the extent of those works which were to be carried out at the cost of the defendant. Even the first plaintiff's evidence varied on this score. At first he appeared to be saying that all the work had been expressly agreed by the defendant. Later, he stated that he regarded the survey report as being his authority to get done all the necessary jobs and that he assumed that the defendant knew that he had to pay. We think that the truth is that there was never any real meeting of minds or free agreement of wills, and indeed we might have arrived at the same conclusion on that basis. The defendant was prepared to pay for items which were long-standing problems and for structural defects. We find that he did give the first plaintiff the impression that curing some of the obvious defects in existence at the beginning of the lease would be paid for by him and that the cost of so doing would be recovered from the previous tenant. We consider that the defendant saw the first plaintiff's skills as being the means of achieving the renovation of the property at very modest expense to himself. We are not satisfied on the evidence that there was any clear commitment by the defendant to meet the cost of repairs and renovations undertaken by the first plaintiff off his own bat. The ***objet*** of the obligation of the defendant was in our judgment insufficiently certain to give rise to a valid contract. It follows, as rightly submitted by Mr. Kelleher, that there was correspondingly no ***cause*** for the plaintiffs' obligation to carry out the work. Counsel for the defendant submitted that, as there was no contract, nothing was due by the defendant. We do not agree that that necessarily follows. What is the legal result of the conclusion at which we have arrived? The absence of an ***objet*** and

indeed of a *cause* renders the contract null. Mr. Costa, for the plaintiffs, submitted that the Court ought to restore the parties to their original position. Some support for Mr. Costa's submission may be found in Nicholas "The French Law of Contract", (2nd Ed'n) at p.77.

> *"A contract vitiated by erreur, violence or dol is null, but the nullity is 'relative' not 'absolute'. By contrast a contract which, for example, lacks a cause or an objet, or of which the cause or the objet is illicit, is absolutely null."*

Professor Nicholas discusses the historical and philosophical origins of the distinction and continues (at p.79)

> *"(b) Effects of the nullity*
>
> *These, as we have said, are the same whether the nullity is relative or absolute, and whatever the reason for the nullity.*
>
> *(i) Effects as between the parties*
>
> *The contract, being null, is in principle without effect ab initio and each party must make restitution of what he has received."*

The right to restitution is not unqualified but in the circumstances of this case we consider that it is just that the defendant should restore to the plaintiffs the benefit which he has received by way of improvement to the property. It is not possible for the Court to put a figure on that benefit without hearing further argument. As the hearing continued some elements of the plaintiffs' claim were abandoned and there was uncertainty about others. We express the hope that further argument will not be necessary and that the parties, with the assistance of their legal advisers, may be able to arrive at a figure which fairly represents the additional benefit received by the defendant from the work carried out at the expense of the plaintiffs. Due account will obviously have to be taken of the respective obligations accepted by the plaintiffs and the defendant under the written agreement of lease. Finally, we would add that the plaintiffs' claim for reimbursement of sums expended on mobiliary effects such as carpets and furniture which remain of course the property of the plaintiffs, clearly have no basis in law.

In relation to the prayer of the amended Order of Justice, we accordingly order that it be dismissed subject to the payment

to the plaintiffs by the defendant of compensation in respect of the benefit which he has received by way of improvement to the property, such compensation to be agreed between the parties or, in default of agreement, to be settled by the Court. For the avoidance of doubt the interim injunction is raised.

We turn now to the defendant's counter-claim. Counsel for the plaintiffs accepted during argument, as we have stated, that there were arrears of rental and ingoing for the period covered by the written agreement of lease which terminated on 31st December, 1992. There is clearly no defence to that part of the counter-claim and we accordingly order that the plaintiffs should pay to the defendant the agreed sum of £13,500.

The defendant also claims "rental on the premises for the period from 1st January, 1993 and continuing". As we have stated above, both Counsel were agreed at the hearing that the clause in the written agreement which purported to create some form of option was of no legal effect. Yet the plaintiffs did not vacate the property on 31st December, 1992. Indeed they remain in occupation, apparently on legal advice, of part of the property, said to be the bar area, although they moved out of the remainder of the premises in September, 1994. On 24th November, 1994 the Chief Fire Officer wrote to the first plaintiff in the following terms:-

> *"Following the recent inspection of the premises, I am compelled to inform you that due to poor structural condition of the external secondary means of escape from the rear of the building, I have no alternative but to restrict the use of this accommodation. No occupation of this accommodation will be permitted until structural repairs have been undertaken.*
>
> *Failure to comply with the above will put you in contravention of the FIRE PRECAUTIONS (JERSEY) LAW 1977 and liable to prosecution."*

It is noteworthy that the poor structural condition of the fire escape was referred to in Mr. Coley's 1985 survey report in the following way:

> *"The concrete column to the escape staircase of the rear extension is badly cracked and an engineer's report is recommended."*

In the 1990 survey report Mr. Coley stated:

"The concrete column to the escape staircase of the rear extension is very badly cracked and an engineer's report is recommended as a matter of URGENCY."

It reflects no credit upon the defendant that, despite this advice, no engineer's report was commissioned and indeed nothing was done. It is fortunate that there were no tragic consequences.

Counsel for the defendant conceded that it was difficult to argue that rental was due after the Chief Fire Officer had effectively closed down the premises. We agree. A lessor is under an obligation to guarantee a tenant against defects which prevent the enjoyment or use of the demised property.

We return to Pothier - Traité du Contrat de Louage, Part II, Chapter I paragraph 109:

"Cette obligation est encore renfermée dans l'obligation, que le locateur contracte par le contrat de louage, de faire jouir le conducteur de la chose qui lui est louée; car lorsque nous disons que le locateur s'oblige à la garantie de ces vices, cela ne doit pas s'entendre en ce sens que le locateur s'engage à empêcher que la chose louée n'ait ces vices, ce qui est impossible, si elle les a effectivement; l.3i, ff. de evict, Mais cela doit s'entendre en ce sens, que le locateur s'oblige, au cas que la chose ait ces vices, ou aux dommages et intérêts que le conducteur en souffre, ou du moins à la décharge du loyer, selon les différents cas, comme nous verrons infrà, ...

110.Les vices de la chose louée, que le locateur est obligé de garantir, sont ceux qui en empêchent entièrement l'usage; il n'est pas obligé de garantir ceux qui en rendent seulement l'usage moins commode."

The question therefore is whether, and if so to what extent, the plaintiffs are liable to pay rental for the period from 1st January, 1993 to 24th November, 1994. Counsel for the plaintiffs submitted that after the expiration of the lease on 31st December, 1992 there came into existence, by *tacite reconduction* a new tenancy. He submitted however that the new tenancy should not be held to include a provision for a commercial rent because the defendant had failed to comply with his obligation at common law to keep the property in good repair. Counsel submitted that a commercial rent would be unthinkable. Counsel continued that once eviction proceedings had been instituted, his clients became *"locataires réfractaires"*.

Counsel for the defendant submitted that there had been no *tacite reconduction* and that the plaintiffs became *"locataires réfractaires"* at the conclusion of the lease. He pointed out that if there had been a *tacite reconduction* it would have been necessary to serve a notice to quit under the Loi (1919) sur la location des biens fonds. No such notice was served. Counsel found it difficult to place a figure on the appropriate amount of rent or compensation which should be paid.

The facts are that when the lease came to an end the plaintiffs continued in occupation of the property. They paid no rent but their continuing occupation was with the full knowledge of the defendant. Indeed the defendant was during the first half of 1993 continuing to undertake repairs and renovations, namely the replacement of windows and the repair of the kitchen and dining-room roof. It is true that on 29th June, 1993 the plaintiffs' legal advisers wrote to the defendant stating that *"we understand from our clients, Mr. and Mrs. Selby, that you are apparently unwilling to proceed to grant them the nine years lease of the premises as envisaged by the agreement concluded between you on 23rd June, 1990 ...."*. But the first occasion upon which the defendant took any steps to signify his wish to regain possession of the property was when his legal adviser notified the plaintiffs by letter of 23rd November, 1993 of his intention to commence eviction proceedings.

Counsel for the plaintiffs referred us to the "Traité du Droit Coûtumier de l'Iles Jersey" (Jersey, 1948) by C.S. Le Gros, where it is stated at p.324:-

> ***"Le bail cesse de plein droit à l'expiration du terme qui a été convenu et arrêté, et le louager doit vuider les lieux sans avis préalable. Mais il arrive quelquefois, après l'expiration du terme du bail, que le propriétaire souffre le locataire de rester en possession de l'immeuble sans prolongation expresse du bail. Cette jouissance non interrompue résulte d'une convention tacite intervenue entre le propriétaire et le locataire qu'on appelle tacite reconduction. En vertu de cette reconduction, les droits et obligations des parties portés dans le bail continuent en toute leur force, mais les engagements de la caution contractés en vertu du bail ne s'étendent pas à la reconduction".***

Le Gros continues that there is no authority as to the precise length of time during which an occupancy must continue before a *tacite reconduction* will be held to have occurred. The customary law of Orléans provided for a period of eight days but

the customs of other provinces provided for different periods. The customary law of Normandy appears to be silent on the point.

Article 3 of the Loi (1946) concernant l'expulsion des locataires réfractaires provides:

> *"(1) Si, à l'échéance de la location, le locataire n'a pas quitté le biens-fonds, le propriétaire le fera assigner à comparaître devant la Cour pour voir ordonner son expulsion du biens-fonds et se voir, en outre, condamné à payer les frais de la procédure et le loyer qu'il pourra encore devoir au propriétaire.*
>
> *(2) L'assignation devra être servie aussitôt que possible après le jour de l'échéance de la location et au moins deux jours avant celui ou la comparution sera requise."*

If the summons is not served "as soon as possible" the presumption may arise that there has been a *tacite reconduction*. In the absence of any statutory time limit, the gestation period for the birth of such a presumption must depend upon the particular circumstances of the case. In our judgment, however, it will be very unusual for a Court not to hold that a *tacite reconduction* has occurred once the owner has permitted the tenant to remain in occupation for a month after the end of the lease.

In this case the occupation continued, without protest on the part of the defendant, for over ten months after the lease came to an end. There can be no doubt, in our judgment, that there was a *tacite reconduction*. What are the rights and obligations resulting from that *tacite reconduction?*

Pothier:- Traité du contrat de louage, Part VI, Section I, paragraph 363 states:

> *"363. La reconduction est censée faite pour le même prix que celui du précédent bail, et aux mêmes conditions. Les engagements respectifs du locateur et du conducteur sont les mêmes qu'ils étoient dans le précédent bail".*

The rental agreed for the year ended 31st December, 1992, was £17,000, payable quarterly in advance. We accordingly hold that a tenancy came into effect on 1st January, 1993 at a quarterly rental of £4,250.

It remains however to deal with Mr. Costa's further submission that the defendant was in breach of his obligation at

customary law to keep the property in good tenantable repair. The written agreement is silent on the respective obligations of the parties as to the carrying out of repairs. Mr. Costa cited Vigot v. Barratt et autre (1949) 245 Ex 124, 176 as authority for the proposition that by the law and custom of the island a lessor is responsible, in default of agreement to the contrary, for the carrying out of all repairs to the demised premises. Although the evidence as to the degree of disruption was not entirely satisfactory it is clear that repairs and renovations were continuing throughout the early part of 1993 and, as we have stated, a major structural defect concerning the fire-escape was not attended to at all. We find that the defendant was in breach of his obligation to carry out necessary repairs to an extent that the plaintiffs' enjoyment of the property was adversely affected.

Our conclusion on this limb of the counter-claim is therefore as follows. The plaintiffs will pay rent to the defendant at the rate of £4,250 per quarter, and pro rata, for the period from 1st January 1993 to 24th November 1994. The defendant will pay damages to the plaintiffs in respect of the breach of his obligations during the same period in the sum of £16,250.

The last item of special damage alleged in the counter-claim relates to "*the cost of installing six en suite bathrooms at the Premises - £6,000*". The written agreement of lease provided:-

> *"However, any such material improvements does [sic] not, in any way include any work performed vis à vis 'en-suite bathroom' conversions, details for which has [sic] been agreed as follows. That the entire costs of such, including the preparation of plans for approval by the IDC (copies of which are to be presented to me for my edification) shall be borne by the new lessees, Mr. and Mrs. H. Selby if a lease is concluded to follow the present agreement terminating on December 31 1992. In the event of there being no lease signed for whatever reason at that time, then I do agree to reimburse to the extent of fifty per cent of incurred costs (both labour and materials) for each 'ensuite' conversion carried out, or the sum of one thousand pounds for each, which ever happens to be the lesser of the two. Again, workmanship and quality of fitted equipment is expected to be on a par with the best available".*

The defendant told us that that clause of the lease was incomplete. He asserted that it had been agreed that the plaintiffs would install three en-suite bathrooms each year making a total of nine bathrooms. Only three bathrooms were in fact installed. The plaintiffs denied that there was an express agreement as to the specific number of bathrooms to be installed.

We are not satisfied on the evidence that there was any such express agreement and this element of the counter-claim is accordingly dismissed.

The claim for general damages in the counter-claim is also dismissed.

In summary, our conclusions have led us to make the following orders.

The Order of Justice has been dismissed subject to the payment to the plaintiffs by the defendant of compensation in respect of the benefit which he has received by way of improvement to the property, such compensation to be agreed between the parties or, in default of agreement, to be settled by the Court. On the counter-claim the plaintiffs have been ordered to pay to the defendants:

(i) outstanding rent and ingoing in the sum of £13,500

(ii) rent for the period 1st January 1993 to 24th November 1994 at the rate of £4,250 per quarter, or *pro rata*.

Conversely the defendant has been ordered, in respect of the breach of the obligation to maintain which we have found, to pay damages to the plaintiffs in the sum of £16,250.

The interim injunction granted by Crill, Bailiff on 8th December 1993 has been raised.

In other respects the counter-claim has been dismissed.

Interest will be payable at the Court rate on all the above amounts from the date of this order to the date of payment.

Finally, we add some closing remarks which we hope may be of assistance to the parties in resolving the outstanding issues in this sorry saga of a quasi-partnership which failed. It is clearly desirable that the plaintiffs should vacate the property as soon as possible. It seems to the Court that some compensation will be due to the defendant in respect of the plaintiffs' occupation of part of the property from 24th November 1994. Without hearing argument, and indeed further evidence, it is not possible for the Court to put a figure on such compensation. But some compensation is clearly due.

It is also clear from the evidence that some work will have to be done to separate the Havre des Pas Hotel from The Palm's Guest House and to restore to each its separate identity. Our inclination is that the parties should bear such costs in equal

proportions. We emphasize however that we are making no order in the matter.

Authorities

Lois (1946 à 1948) concernant l'expulsion des locataires réfractaires.

Pothier: Traités sur différentes matières de droit civil et de jurisprudence francoise (2e Ed'n), revue; Paris et Orléans, 1781).

Tome Premier, Partie 1, chapitre 1: paras 2, 53, 137 (Traité des Obligations).
Partie 2, chapitre 1: paras 109-110 (Traité du contrat de louage).
Partie 6, section 1: para 363 (Traité du contrat de louage).

Code Civil: Article 1108.

C.S. Le Gros: "Traité du Droit Coûtumier de l'Ile de Jersey" (Jersey, 1948): p.324

Vigot -v- Barratt & Aus. (1949) 245 Ex 124, 176.

Précis Dalloz: Droit Civil, Les Obligations (4e Ed'n, 1986) (Weill & Terré): pp.244-5, 266-71.

Nicholas: "The French Law of Contract (2nd Ed'n) (Oxford, 1992): pp.77-9, 114-126.

Osment -v- Constable of St. Helier (1974) JJ. 1.

Wightman -v- Cathcart Properties, Ltd. (1970) JJ. 1433.

Sibley -v- Berry (7th July, 1987) Jersey Unreported C.of A.

Wallis -v- Taylor (1965) JJ. 455.

Rennell -v- Le Mière (30th April, 1993) Jersey Unreported.

Alker -v- Le Masurier, Ltd. (21st July, 1992) Jersey Unreported; (1992) J.L.R. 173.

de Carteret -v- Applegate & Anor. (1985-86) J.L.R. 236.