

File

IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

Set 3

A.No. 174/84

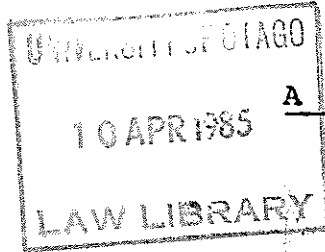
BETWEEN

B. & S. MALIN LIMITED

PLAINTIFF

PUTARURU HOTEL LIMITED

DEFENDANT



A N D

Hearing : 4th December 1984

Counsel : R. Wilson for plaintiff
No appearance by or on behalf of defendant

Judgment : 4th December 1984

ORAL JUDGMENT OF BISSON J.

The plaintiff company is the sub lessee under sub sub lease produced as Exhibit 1 which lease was granted by the defendant to the plaintiff. The plaintiff entered into an agreement for sale and purchase of its interest under the lease to one John Maxwell, as agent, and sought the consent of the lessor under the said lease pursuant to clause 3 of the sub sub lease which contains a covenant in the usual form including the provision that the consent to an assignment will not be arbitrarily or unreasonably withheld in the case of an assignment or sub letting to a respectable financial and responsible assignee who will contemporaneously enter into a deed of covenant with the lessor.

Correspondence relating to the proposed assignment reveals that the proposed assignees are, in the terms of the covenant, respectable financial and responsible assignees but the defendant has raised certain objections to consenting to the proposed assignment. The last letter from the solicitor for the defendant, being dated 26th September 1984, sets out that the defendant will not grant his formal consent to the transfer and states that what is required is that rental reviews be firmly established at this time, that is before the consent is granted, and various suggestions are made in that regard which would require the execution of a variation of lease, including a reduction in the term of the sub sub lease.

Such a major departure from the terms of the existing lease is, in my view, an unreasonable term to impose to the granting of consent to the assignment which is otherwise in order. Accordingly, the order of the Court is that the plaintiff is entitled to assign the said lease to Mr. and Mrs. John Maxwell and that the defendant give its written consent to that assignment subject to Mr. and Mrs. Maxwell contemporaneously entering into a deed of covenant in accordance with the provisions of clause 3 of the sub sub lease.

There will be an order for costs of \$500 in favour of the plaintiff against the defendant together with disbursements as fixed by the Registrar.

G. B. B. B.