

2. The plaintiff Liema, however, is only entitled to collect the *alab's* share from these *wato* from the time she was recognized as *alab* by *Iroiĵ Lablab* Loben in July 1961.

3. This judgment shall not affect any rights of way that may be over the lands in question.

4. No costs are assessed against either party.

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MOTTAN, Appellant

v.

LANJEN and TOMIJWA, Appellees

Civil Action No. 181

Trial Division of the High Court

Marshall Islands District

November 16, 1962

Action brought to interpret lease agreement and for increased rental payments. The Marshall Islands District Court held that when nature of business conducted on rented property was changed during term of lease, amount of rental should reflect such change. On appeal, the Trial Division of the High Court, Chief Justice E. P. Furber, held that although decision of District Court was correct, evidence was insufficient to establish amount of rent due.

Remanded with instructions.

**1. Landlord and Tenant—Commercial Lease—Change in Nature of Business**

Where business contemplated under lease agreement was usual type of retail store in Marshall Islands, with no mention of selling alcoholic beverages, sale of beer for consumption on premises changed nature of business to a "club."

**2. Landlord and Tenant—Commercial Lease—Change in Nature of Business**

Where lease agreement contemplated usual type of retail store in Marshall Islands, change in nature of business from retail store to club should not have been made without consent of lessors.

**3. Landlord and Tenant—Commercial Lease—Change in Nature of Business**

While business was operated as club instead of retail store as contemplated in lease agreement, rent should be appropriate for changed type of business unless and until new agreement is reached with lessors.

**4. Judgments—Stay of Execution**

Execution of judgment will not be stayed pending appeal unless either appellate or reviewing or trial court orders stay for cause shown and upon such terms as it may fix. (T.T.C., Sec. 201)

**5. Judgments—Order in Aid of Judgment**

Order in aid of judgment may call for payments before appeal is finally determined, if order has been entered that appeal shall not stay the judgment. (T.T.C., Sec. 290)

**6. Judgments—Stay of Execution**

Person who desires to delay effect of judgment should be ready to give security or other guarantee that judgment will be paid or otherwise complied with if it is affirmed in whole or in part, as result of the appeal. (T.T.C., Sec. 290)

**7. Judgments—Damages**

Where District Court judgment does not cover matter of amount due in accordance with it, justice requires both sides be given opportunity to present evidence as to this issue.

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*Interpreter:*

CARL HEINE

*Counsel for Appellant:*

JAMES MILNE

*Counsel for Appellees:*

MO and KUMTAK

FURBER, *Chief Justice*

The appellant claims there was no formal trial in the District Court, but just an informal hearing. The only ways in which he claims to have been prejudiced by this, however, are: (1) by the court's finding that the appellant Mottan started selling beer January 1, 1962, as stated in the court's memorandum of the case (but not mentioned in the judgment), while he claims he did not start until February, and (2) that the District Court made no mention of the fact that some of the rent has been paid in advance for which the appellant should have been given credit.

The appellees admit that a certain amount of rent, at the old rate, has been paid in advance, but they were unable to agree with the appellant as to the exact amount. They further still insist that the appellant started selling beer in January.

There was considerable discussion as to whether the appellees had signed the alleged written lease, which the

appellant claims they did. The appellees admit, however, that there was an oral lease to just the same effect as the written lease claimed by the appellant, so far as the issues raised in this case are concerned. The court therefore announced at the hearing that it considered it utterly immaterial so far as this case is concerned whether there was a written lease since there is no rule at present in the Marshall Islands District requiring such agreements to be in writing.

## OPINION

This case was obviously presented to the District Court in a very informal manner, the basic issue being simply as to the interpretation of the lease agreement involved. As to that issue there seems to be no dispute about the facts.

[1-3] The appellant Mottan had obtained permission from the appellees to set up a retail store at a rental of \$5.00 a month upon land in which they had rights. At that time the business contemplated was simply the usual type of retail store in the Marshall Islands without any mention of the selling of alcoholic beverages in any form. In January or February the appellant, without consulting the appellees, started selling beer for consumption on the premises, thereby changing the nature of the business to what the appellees call a "club". The court fully concurs with the District Court's decision that such a change in the nature of the business should not have been made without the consent of the appellees, and that while the business was so operated it would pay rent appropriate for the changed type of business unless and until a new agreement was reached with the appellees.

It is agreed that the appellant ceased selling beer in his business in September owing to the objections of the appellees.

[4-6] It also appears that there was a misunderstanding by the parties as to the effect of the Notice of Appeal, since the court had failed to act in any way upon the appellees' previously filed motion dated October 11, and filed October 12, 1962. For future guidance of all concerned attention is invited to Section 201 of the Trust Territory Code which expressly provides that pending an appeal, the execution of a judgment will not be stayed "unless either the appellate or reviewing or the trial court orders a stay for cause shown and upon such terms as it may fix." Attention is also invited to Section 290, indicating that an order in aid of judgment may still call for payments before an appeal is finally determined if an order has been entered that an appeal shall not stay the judgment. The idea is that a person who desires to delay the effect of a judgment should be ready to give security, or other guarantee, that the judgment will be paid, or otherwise complied with, if it is affirmed in whole or in part, as a result of the appeal.

[7] While the basic decision of the District Court is concurred in, that court's judgment does not cover the matter of the amount due in accordance with it, and the court believes that justice requires that both sides be given opportunity to present evidence as to this.

#### JUDGMENT

The judgment of the Marshall Islands District Court in its Civil Action No. 110 is set aside and the action remanded to that court with instructions to reopen the trial and take evidence on the question of when the defendant Mottan, in that action, began selling beer and how much rent has been paid in advance by the plaintiffs having obtained goods from the defendant's store, or otherwise, and then render a new judgment in accordance with the foregoing opinion, specifying the amount due from the

defendant to the plaintiffs, figuring the rent at the rate of \$20.00 per month for the period the defendant was selling beer for consumption on the premises, and at \$5.00 per month when he was not doing so, and giving him credit for whatever rent has been paid in advance in goods or otherwise.

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MADRIS, Appellant

v.

ILAB, Appellee

Civil Action No. 235

Trial Division of the High Court

Palau District

November 16, 1962

Action by owner of house against builder, in which owner contends that price paid for house was excessive, work was poorly performed, and that interest paid on money advanced by builder was usurious. The Palau District Court held that all matters in controversy between the parties concerning house were settled and determined at traditional *ocheraol*. On appeal, the Trial Division of the High Court, Chief Justice E. P. Furber, held that according to Palau customary law, all issues in dispute were settled, but that interest paid by plaintiff was usurious and excess must be returned by defendant to plaintiff.

Modified in part and affirmed in part.

**1. Palau Custom—"Ocheraol"**

Mere fact that policeman accompanies builder of house to traditional Palauan *ocheraol* does not put owner of house under duress to agree to higher payment for house than he would have otherwise.

**2. Palau Custom—"Ocheraol"**

Under Palau custom, payment by owner of house to builder of sum of money agreed upon at *ocheraol*, and return of part of sum by builder to owner as sign of satisfaction with payment, customarily concludes all issues in dispute.

**3. Equity—Generally**

Generally speaking, only grounds on which suit can be maintained to recover money paid are fraud, mistake or duress.

**4. Courts—Settlements**

Executed agreements of settlement, concluding relations of parties and based upon valid and adequate consideration, honest differences, and good faith, are binding upon parties.