BRITISH PETROLEUM MIDWEST AFRICA (LIBERIA) LTD., Appellant, *v.* **MAMADEE KROMAH**, Appellee.

APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY

Heard: March 21-22, 1984. Decided: May 10, 1984.

1. He who is silent when he should speak assents.

2. A license coupled with interest in real property confers the right, not just permission, as in the case with a mere license, to perform an act or acts upon the property, thereby being irrevocable and constituting an interest in the land itself.

3. A license coupled with interest in real property becomes an "invitation" where it is shown that the premises were used for the intended purpose, the owner acquiesced in acts and conduct of the occupant, and that the business operated for the benefit of both parties.

4. A license to use real property is irrevocable where it is shown that the licensee has made expenditures on the said property. The licensee is entitled to compensation for said expenditures.

5. Having a license to use real property is not a defense in an action of summary ejectment.

The appellant and appellee, by letter dated April 8, 1975, entered into what they termed a Trial Dealership Agreement, allowing the appellee to operate appellant's petroleum products service station for a period of four months on a trial basis. The appellee, among other things, was required to buy all his petroleum products from the appellant, hire and pay his own staff, obtain license to operate, and pay all utility bills. The appellee was to receive six cents per U.S. gallon on all appellants' products, as well as two cents commission on all the appellant customers' gas slips. At the end of the trial period, appellant was to confirm or discontinue the agreement, neither of which appellant did. Consequently, the appellee continued to operate the service station for the next seven years, making worthwhile repairs and improvements on the premises. Then in November, 1982 the appellant accused the appellee of buying petroleum products from third parties and, thereupon, terminated the agreement. Shortly thereafter, appellant filed an action for summary ejectment in the Civil Law Court of the Sixth Judicial Circuit of Montserrado County against the appellee. The trial court dismissed the action on the grounds that the appellee was a "contractor tenant", not an ordinary tenant, who had occupied the premises on mutual understanding growing

out of a business relationship. The plaintiff appealed the ruling. The Supreme Court *reversed and remanded.*

Christian D. Maxwell for plaintiff/appellant. *Nelson Broderick* for defendant/appellee by brief.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

On April 8, 1975, British Petroleum Midwest Africa (Liberia) Ltd. (BP), plaintiff, by a letter of understanding called Trial Dealership, appointed Mamadee Kromah, defendant, a trial dealer to manage and operate its petroleum products service station on Bushrod Island for a period of four (4) months.

According to said dealership understanding, defendant was to purchase on cash down basis all petroleum products from plaintiff's company. In return, defendant was to receive six cents (6¢) per U.S. gallon on all BP products purchased, as well as two cents (2¢) commission on BP customers' gas slips. Defendant was also responsible to employ and pay his own staff as well as obtain license to operate the facilities, and pay all utility bills accruing in the course of his operations. After the four-month trial period, it was the understanding that the plaintiff would either confirm or rescind the agreement. However, after the trial period, no confirmation or rejection of defendant's position came from the plaintiff but, instead, for seven (7) years the defendant managed and operated the station successfully until November 15, 1982, when plaintiff accused defendant of purchasing petroleum products from third parties. Whereupon, plaintiff reportedly wrote a letter to defendant notifying him of the revelations and, subsequently, terminated the dealership contract on February 18, 1983. It is noteworthy that the said letter is not before this court, same having previously been denied admission into evidence.

Following the purported termination of the dealership agreement, plaintiff filed this suit of summary ejectment against the defendant in the Civil Law Court of the Sixth Judicial Circuit, Montserrado County, to recover said service station. Pleadings progressed as far as the reply and rested.

On July 1, 1983, during the disposition of the law issues, the court dismissed the plea of *lis pendens* and ruled the case to trial on the facts, to which defendant excepted and later filed a motion to consolidate the three (3) causes of action, namely: action of damages for trespass, action of damages for breach of contract and action of summary ejectment. The motion was resisted and denied, whereupon the trial was held and the court entered final judgment dismissing the action of summary ejectment on the grounds that the defendant was a "contractor tenant" and, as such, he was not an ordinary tenant, but one who had occupied

the premises on a mutual understanding growing out of a business relationship. To this final judgment, plaintiff/appellant excepted and filed both its bill of exceptions and brief, maintaining that the judge committed a reversible error when he dismissed the summary ejectment action and referred to the relationship created by the dealership agreement as a "contractor tenant," thereby implying that such a relationship is a valid defense in a summary ejectment action, unlike that of a tenant-at- will.

In the appellee's brief, he acknowledged that both the land and the service station belong to appellant, but strongly maintained that he was neither a tenant-at-will nor an intruder who had entered the premises illegally, therefore summary ejectment was not the proper action since it did not afford him notice in view of the attending circumstances of the dealership agreement, nor take into account the fact that improvements were made on the premises by appellee. Therefore, the appellee further contended, the question of ownership should not be taken alone as the determining factor.

The issues which this Court considers pertinent for the determination of this case are:

1. What is the legal relationship between the parties as created by the dealership understanding in respect of the subject matter, the service station?

2. Whether or not such a relationship is a valid defense in an action of summary ejectment.

Before directing our attention to the first issue, let us take a glance at the "Trial Dealership Agreement" for the benefit of this opinion:
"EXHIBIT D/1"
Mr. M. Kromah
c/o BP LMS
Bushrod, Island
Monrovia, Liberia
75/PL-31/266

Dear Sir:
TRIAL DEALERSHIP
We write to confirm our decision to appoint you as the provincial dealer of our BP L.M.S. Service Station situated at Jamaica Road, Bushrod Island for a trial period of four months from 8th April, 1975.

The stock taken was completed and signed by you on 8th April 1975 and payment in cash for the cost of petroleum products handed over to you on 8th April, 1975 is due by close of

business on 9th April 1975.

All supplies of petroleum products will be purchased from BP (West Africa) Ltd, and will be on cash with order basis.

You will receive a gross margin of 6 cents per USG on main products namely BP Premium Motor Spirit, BP Regular Motor Spirit, BP Automotive Bus Oil (ACO) and BP Kerosene.

On supplies of BP main products supplied to BP slip customers, you will receive a commission of 2 cents per USG, plus the replacement of the product on presentation of properly authorized and completed BP slip.

You are responsible for the employment and payment of the appropriate number of staff to operate the BP station.

You are responsible for the prompt payment of all bills for power and water, plus the appropriate license to operate the station. At the end of the trial period a decision will be taken as to whether you will be confirmed as the dealer or not and the company's decision will be final.

Yours faithfully,
Signature not clear
MANAGER - LIBERIA"
Certified true and correct copy. Clerk, Civil Law Court.

The trial judge described the legal relationship between the parties as one of "contractor tenants", but being at a loss to understand said non-legal jargon, we are constrained to believe that His Honour meant to say that appellee was not an ordinary tenant but one who had come onto the premises as a result of a written contractual understanding between the parties. On the other hand, the appellant, in its brief, chides the ruling and strongly maintains that the relationship between the two parties was nothing but a license to use certain facilities provided by it for their mutual benefits in the business of selling petroleum products. The appellee apparently has no quarrel with the latter definition of his relationship with the appellant, and maintains that title to said premises is not in dispute. Appellee, however, maintains that appellant has no right to remove him from the premises by summary ejectment, without notice and compensation.

Since the trend of reasoning in defining the relationship between the litigants seems to point in the direction of a license, we shall proceed to examine and define the word "license" in

order to ascertain whether it would properly categorize the relationship established by the dealership agreement. A license in real property is a personal and unassignable revocable privilege conferred either by writing or parole to do one or more acts on land without possessing any interest therein. 33 AM. JUR. *Licensee,* § 91.

According to the dealership agreement and the contentions of both parties, it appears that appellee was a licensee on said property. He admittedly had no property interest in the land, and his relationship with appellant was personal. He was to hold and maintain said premises for the business interests of both parties. The dealership agreement stipulated that appellee was to occupy said premises, buy petroleum products only from appellant, employ and pay staff to operate the service station, pay all business expenses to government and customers, and at the same time receive BP gas slips on behalf of the appellant. The petroleum products obtained from appellant were at a reduced rate, and commission was paid on service slips received by the appellee.

From the foregoing, it is clear that the agreement by which appellee occupied the premises of appellant was in writing. Moreover, the requirements that appellee buys all his petroleum products solely from the appellant and at the same time promote the appellant's business and satisfy its customers, could be interpreted as consideration given to secure the license. Additionally, after the trial period of four months, appellee made such worthy repairs and improvements on the premises to enhance the viability of the service station, as shown by the evidence adduced at the trial. While all of the foregoing activities occurred, the appellant did nothing but, instead, acquiesced in the conduct of the business by appellee until the filing of the suit seven years later. He who is silent when he should speak, assents. *Clark et al.* v. *Lewis*, 3 LLR 95 (1929).

Considering the situation analyzed above, it is proper to say that the relationship between said parties over the seven-year period had gone beyond a mere license, and can rightly be described as "a license coupled with interest", or an "invitation". BALLENTINE'S LAW DICTIONARY 736 (3d ed.) defines a license coupled with interest as "a license in real property which confers the right, not the mere permission, to perform an act or acts upon the property, thereby being irrevocable and constituting an interest in the land itself." Other competent authorities hold that where a license assumes the above characteristics it automatically becomes what is termed an "invitation". According to Black's Law Dictionary:

"An 'invitation' is inferred where there is a common interest or mutual advantage, or where an owner or occupant of premises, by acts or conduct, leads another to believe the premises or something thereon were intended to be used by such other person, that such use is not only acquiesced in by the owner or occupant, but is in accordance with the intention or

design for which the way, place, or thing was adapted or prepared or allowed to be used, while a license is implied where the object is the mere pleasure, convenience, or benefit of the person enjoying the privilege." BLACK'S LAW DICTIONARY 1069 (4th ed.)

The relationship between the parties takes the form of an "invitation," considering that the appellee came on said premises not to simply enjoy the facilities provided by the appellant at the service station, but to use such station freely in the best interest of both parties, and for their mutual advantage. According to the records certified to us, there is sufficient evidence to show that during the seven (7) years the appellee made improvements on the property, consistent with the purpose for which it was intended. As part of the improvement, he reclaimed the backyard from a swamp and added a garage to the station to make it more serviceable to customers.

Regarding the second issue, that is, whether or not the existence of a license between the parties can be used as a defense in action of summary ejectment against the appellee, the lower court answered in the negative. That court determined that the relationship was based on a contract, culminating in what it called a "contractor tenant" in referring to the appellee. Appellant disagrees and maintains that the action will lie, leaving appellee with the right to sue for damages for injuries sustained thereby. Appellee, for his part, does not agree with the appellant's contention and maintains that appellant should first compensate him before attempting to eject him from the property and, even then, he should first be served adequate notice. The dealership agreement is silent as to the manner of eviction of the appellee, even when the appellee purchases products from elsewhere in violation of the instrument. We therefore look to the substantive law for guidance.

According to the American Jurisprudence, where expenditures are made by license, the rule is that such a license is irrevocable:

"In many jurisdictions where a licensee has entered under a parole license and has expended money or its equivalent in labor, it becomes irrevocable and the licensee acquires a right of entry on the lands of the licensor for the purpose of maintaining his structures, or, in general, his rights under the license, and the license will continue for so long a time as the nature of it calls for. This rule is particularly applicable where the licensee is engaged in the business of serving the public and could otherwise have used its rights to acquire property by condemnation.

The cases holding to this rule as to irrevocability of certain licenses proceed on two distinct theories, one theory being that when the licensee expends large sums of money in making the improvement, and such expenditure is made without opposition by the licensor, the

license becomes executed and, as such irrevocable; and that, in fact, what was at its inception a license becomes, in reality, a grant. The other theory, and the reason most frequently given, is that after the execution of the license, it would be a fraud on the licensee to permit a revocation; that the principle of equitable estoppel is invoked to prevent what would work a great hardship in many instances. This is especially true where a licensor not only grants the right to the licensee to go on his land, but joins in the enterprise and accrues the benefits of the licensee's labor and expense." 33 AM. JUR. *Licensee,* § 103, under caption "Where expenditures are made by licensee–Rule that license is irrevocable."

The exposition made above clearly explains the law of license in real property where expenditures are made by the licensee. The license becomes irrevocable and special means have to be resorted to for terminating it. The licensee who makes such expenditures under the license is entitled to compensation for said expenditures. 33 AM. JUR. *Licensee*, § 106.

From these legal and factual circumstances it can be gathered that a license is not a legal defense to an action of summary ejectment, because failure to evict appellee will create a permanent interest in the property subject of this litigation, contrary to the basic elements of a license, even though great injustice will be done to appellee if he were to be evicted from the premises without notice or just compensation. Therefore, the judgment in this case is hereby *reversed* and the case remanded. Costs to abide final determination. It is so ordered.
Judgment reversed.