MOHAN ANANDANI, et al., Informants, *v.* A. MOMOLU MASSAQUOI, et al., Respondents.

CONTEMPT PROCEEDINGS.

Argued November 9, 1977. Decided November 25, 1977.

1. In deciding an information for contempt of court, the Supreme Court does not exercise original jurisdiction, in violation of its constitutional limitation, over the proceedings leading to the mandate of the Court which informants allege was contemptuously disobeyed.
2. A lessor cannot enter upon and take possession of the leased property for nonpayment of rent without resort to appropriate judicial proceedings.
3. Re-entry by a lessor upon leased property in defiance of a court order permitting the lessee to continue his occupation of the premises and carry on his business there constitutes contempt of court.
4. Counsel who advises a client to disobey a Supreme Court mandate, thus causing the client to violate a court order, is in contempt of court.

The parties before the Court in this proceeding for contempt were lessor and lessee of property which was occupied by a building used as a cinema theater. Two leases were involved, one for one year and the other for five years. The lessor applied to the Circuit Court for an injunction to restrain the lessee from continuing to operate the cinema. The court granted the injunction, but then modified the order, allowing the cinema to be reopened on lessee's furnishing of a bond to indemnify lessor for any loss he might sustain by the continued operation. The lessor then applied to the Justice in chambers for issuance of a writ of certiorari to restrain lessee from operating the cinema, and the petition was granted. On appeal to the full bench from that ruling, the Supreme Court held that certiorari was not a proper means to restrain operation of a business, but ordered the bond which had been set aside by the Justice in chambers reinstated and permitted the cinema to be reopened. Following that decision the lessor entered the premises and closed

the doors of the cinema, posting men to prevent its re-opening.

The Supreme Court *adjudged* the lessor's attorney *guilty of contempt* for advising his client to re-enter the leased premises in violation of the order of the Court, but absolved the respondents who were not lawyers and acted on advice of counsel.

M. M. Perry for informants. *M. Fahnbulleh Jones* for respondents.

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

In *Grant* v. *The Foreign Mission Board of the National Baptist Convention,* 10 LLR 209, 213, 214 (1949), this Court laid down the principle that the jurisdiction of the courts cannot be ousted in matters growing out of or pertaining to written agreements between parties. In that case a clause in the written agreement between the contracting parties stipulated that "in case any question should arise in the fulfillment of the articles of this contract that cannot be settled to the satisfaction of both parties, that such question or questions shall be referred to the Executive Board of the National Baptist Convention," and they agreed to accept the findings of the Board as final and binding.

One of the parties to that agreement sued in Monrovia for breach of one of the terms of the agreement, and in passing upon this particular point, the presiding judge in the Civil Law Court made the following ruling:

> "The language here quoted is simple and plain. It creates an inhibition against the contractors; it demarcates a boundary line and builds a wall at which a tribunal designated by the contractors would meet, adjudicate, and give final decision on all dissatisfaction between the parties on the execution and fulfillment of

the terms of the contract. It binds them to the acceptance of the decision of that body, without recourse to judicial proceedings.

"In legal and logical conclusion, the language means that the contracting parties closed their doors against the courts of justice, that they discountenance judicial litigation as to disputes on the contract and are in agreement that the religious head office shall settle disputes growing out of the agreement."

The judge then proceeded in his ruling to dismiss the action; the matter was appealed to the Supreme Court, and the Court reversed the judgment, quoting the following in support of its decision, *Grant* v. *The Foreign Mission Board, supra,* 217–218:

"Both in England and the United States it has been decided in a great number of cases, and conceded in an equally large number of other cases, to be settled law that the jurisdiction of the courts cannot be ousted by the private agreements of individuals made in advance, that private persons are incompetent to make any such binding contract, and that all such contracts are illegal and void as against public policy. . . . Courts are created by virtue of the Constitution and inhere in our body politic as a necessary part of our system of government, and it is not competent for anyone, by contract or otherwise, to deprive himself of their protection. The right to appeal to the courts for the redress of wrongs is one of those rights which are in their nature under our Constitution inalienable and cannot be thrown off or bartered away." 14 AM. JUR., *Courts,* § 196 (1938).

The parties to that case by written agreement provided that disputes between them growing out of the agreement would be settled outside of the courts, and the Supreme Court ruled that this cannot be done. How much more repugnant to that decision of the Supreme Court therefore would it not be for a party to an agreement unilater-

ally and without seeking redress through the courts to terminate an existing agreement duly signed by him and the other contracting party?

The history of the present case as shown in the record before us is as follows:

On July 30, 1976, A. Momolu Massaquoi leased to Mohan Anandani property in Monrovia, on which is erected a building used by Anandani as a cinema theater. The lease of this property is covered by two agreements; the life of one is for one year, and the life of the other is for five years. Both are signed by the parties and their signatures witnessed; both began on September 5, 1976; one ends on September 5, 1977, and the other on September 5, 1981.

During the life of these two agreements, and before either of them had expired, Massaquoi, on March 4, 1977, filed in the Civil Law Court in Monrovia proceedings to cancel the lease agreement for one year; count 9 of the petition for cancellation refers to this agreement as Exhibit "C." Count 10 of the petition for cancellation refers to the other agreement for five years, and it is denominated therein as Exhibit "F." Incidentally, the proceedings for cancellation of the agreement marked "C" are still pending in the Civil Law Court undetermined, so we will make no further comment.

On March 14, 1977, ten days after cancellation proceedings had been filed, Massaquoi, the lessor in both agreements, applied for injunctive orders against his lessee to restrain him from continuing to operate the cinema, in spite of the two agreements, for reasons which do not concern these information proceedings, so we will not dwell upon them. Judge Flomo issued the orders, and the cinema was closed down.

On the same day the respondent in injunction filed a motion to vacate or modify the injunction, and offered a bond to indemnify the petitioner against any loss he might sustain through the continued operation of the

cinema. In the exercise of his discretion and relying upon the applicable statute, Rev. Code 1:7.65(3), the judge approved the respondent's bond in the sum of $18,000 to protect the petitioner, and vacated the injunction order to permit the reopening of the cinema, which was accordingly done. The injunction proceeding is also still pending in the Civil Law Court.

At this point the petitioner applied to the Justice in chambers for the issuance of a writ of certiorari, and prayed that the respondents in certiorari be commanded "to desist from interfering with and operating the cinema." The Justice in chambers heard the matter, and in his ruling of June 2, 1944, decided as follows:

> "The bond offered and duly approved by Judge Flomo for reopening of the cinema section is hereby declared null and void to all intents and purposes and forever set aside. The cinema section ordered by us to be closed shall remain closed until a complete hearing of all the facts in the case shall have been brought to light and a legally qualified bond filed in the event the situation warrants it, that is, until all the parties shall have been afforded every legitimate opportunity to be heard by the court below, so that it may determine the rights of the parties in these proceedings and shall have been completely investigated and a ruling thereon given."

To this ruling respondents in certiorari took exceptions and announced an appeal to the bench *en banc*.

While the appeal was pending and before it could be heard, Daniel Tolbert and D'Arcey Bernard applied to intervene as partners in the company known as National Cinema Incorporated, of which respondent Mohan Anandani is also a partner, and which company operates the cinema, the subject of the injunction and certiorari proceedings. The Court granted them intervention and proceeded to hear the appeal.

On August 9, 1977, the Court issued an opinion which stated:

> "We have not been able to find any authority, either in the common law or in our statute or in any decided case of the Supreme Court, that certiorari can restrain operation of a business or enterprise. Moreover, it cannot command the performance of an act or duty, as in mandamus; nor can it forbid continuance of anything done or about to be done, as in prohibition. The functions of the various remedial writs differ, and one will not perform the functions of another."

The court therefore reversed the ruling in chambers stating in its opinion:

> "In view of the circumstances, we are of the considered opinion that the petition should be and the same is hereby dismissed, and request for issuance of the peremptory writ is denied. The question of whether or not the injunction out of which these proceedings grow can legally stand, in view of the existing lease agreements which have not expired, and the fact that the one year's cash consideration has already been received by petitioner, must be decided later.
>
> "The bond set aside by the Justice in chambers is hereby restored to indemnify the petitioner in injunction from any loss which he may sustain; and the cinema is ordered reopened in keeping with Judge Flomo's order, which we find to be legally authorized."

In obedience to this command of the Supreme Court, the cinema was reopened and operated up until September 8, 1977, when informants who were respondents in the certiorari as well as the injunction proceedings, filed information in the chambers of our colleague Mr. Justice Henries, to the effect that notwithstanding the Court's decision in the certiorari proceedings, A. Momolu Massaquoi, Joseph K. Forkpah, and others whose names are not mentioned, have closed the doors of the cinema and

placed men there to keep informants out. Informants contend that this act of the respondents is contemptuous, and that they should be cited to appear and show cause why they should not be made to answer in contempt of Court. After issuing the alternative writ, Mr. Justice Henries has sent the matter for hearing by the bench *en banc.*

Respondents filed a return to the bill of information, denying therein that they have "obstructed the enforcement of this Court's mandate directly or indirectly." They say further that in keeping with the terms of the lease agreement, informant/lessee should have paid the annual lease money on September 5, 1977, but failed to do so. We would like to observe just here that the agreement for one year having expired on September 5, 1977, respondents must have been referring to the other agreement for five years, since it does not expire until September 1981. The respondents further say that in keeping with the said agreement, Massaquoi as lessor had the right to re-enter and repossess his property after having notified the lessee by letter dated September 3, 1977, and marked Exhibit "C," forming a part of the return. The respondents also contend that the purpose for the information is to cause the Supreme Court to take original jurisdiction over the lease agreement and the cancellation proceedings filed in the Civil Law Court, which this court has no authority to do. These are the four salient issues raised in the return in defense against the bill of information. We shall traverse them in reverse order.

The Supreme Court has only appellate jurisdiction over all matters, except those in which counties are parties, and those affecting ambassadors, public ministers, and consuls. Constitution, Article IV, Section 2nd. We do not agree with the contention that anything in the bill of information could be taken as seeking to cause the Supreme Court to take original jurisdiction over the cancellation proceedings now pending in the Civil Law

Court because the two agreements—that for one year as well as that for five years—were made profert with the injunction proceedings out of which the certiorari proceedings had grown, as can be seen by recourse to the Court's opinion of August 9, 1977. The same agreements are also the subject of the cancellation proceedings now pending in the Civil Law Court. Nor do we agree that filing an information that our mandate to enforce the judgment in certiorari has been disobeyed could be taken as seeking to cause the Supreme Court to take original jurisdiction over the cancellation proceedings in the Civil Law Court. Our traversal of the bill of information and the return filed thereto can in no way affect the decision in the court below with respect to the two agreements. We are not concerned with how the cancellation proceedings will be decided; at least not now. Moreover, it would be impossible for us to pass upon the bill of information, which deals specifically with the two agreements as they relate to the injunction and certiorari proceedings, the judgment of the latter of which informants say respondents have disobeyed, if we do not make reference to these agreements, the subject of the injunction and the certiorari which grew out of the injunction.

With respect to Massaquoi's right to re-enter upon and repossess real property which he had leased to informants, before the term of the said lease agreement had expired, we cannot agree that he had any such right, unless it had been given him by a court of competent jurisdiction. One of the two agreements involved does not expire until September 1981. There were several remedies available to the lessor, if he felt that any particular term of the agreement had been breached or violated; and no one of these several remedies could have authorized him to abrogate his own agreement for the lessee to occupy the premises for a specific term of years.

Moreover, respondents have admitted in count 5 of their return that proceedings to cancel the agreement

were pending in the Civil Law Court when they undertook unilaterally, and without court intervention, to repossess the property held under leasehold. Those proceedings are still pending. We must wonder then, what will be the effect of respondent/lessor's re-entry upon the leased property before hearing and determination of the case now pending to cancel the agreement under which the leasehold is enjoyed by the lessee. But that is a question we cannot decide at this time, so we will make no further comment.

Respondents have said in their return that the lessor reentered upon the leased property before expiration of the term of the lease because the lessee had failed to pay the annual rental in advance, as is stipulated in the agreement. At the hearing before us, counsel for respondents argue this point with marked emphasis and impressive oratory. But the question here is: Did his client have the competence to decide cancellation of the lease agreement under which the lessee held the property, outside a court of competent jurisdiction? Could he legally constitute himself a court of equity to cancel the agreement?

According to our legal system, all cancellation of documents and all enforcement of the terms and performance of an agreement are cognizable before a court of equity. If the failure to have satisfied the agreement for payment in advance of the annual rental was regarded by the lessor as a breach of the terms, this was clearly a matter for the courts to say whether or not this breach amounted to ground for setting the agreement aside. Neither of the parties had legal authority or competence to stop enforcement of the terms of a valid agreement; and this can only be accomplished by due process of law.

We come now to consider the first issue raised in the return of the respondents, to wit, did respondents' re-entry upon the leased property during the life of the agreement, and in face of the Supreme Court's opinion deciding the proceedings in certiorari, amount to contempt? The re-

turn denied that respondent was guilty of contempt in so doing.

During the argument before this Court, Counsellor M. Fahnbulleh Jones, of counsel for the respondents, admitted that his client, respondent A. Momolu Massaquoi, had re-entered upon the premises upon his professional advice. He argued that doing so did not obstruct enforcement of the Supreme Court's decision. Now let us see how this contention harmonizes with the Supreme Court's opinion of August 9, 1977, deciding the proceedings in certiorari.

The Court in its opinion in the certionari proceedings recognized the existence of two agreements. Both of them covered the cinema premises, the subject of the injunction out of which the certiorari grew. One of the agreements expired in September 1977, and the other in September 1981. As far as the Court was aware up to that point, both agreements were valid, duly signed by the parties and witnessed. Both agreements were annexed to the injunction proceedings and found in the record certified by the Clerk in the Civil Law Court, which record formed a part of the proceedings in certiorari. The Court reviewed these two agreements when it considered the certiorari, and in the opinion deciding the case we said: "The question of whether or not the injunction out of which these proceedings grow can legally stand, in view of the existing lease agreements which have not expired . . . must be decided later." The injunction referred to hereinabove is still pending in the Sixth Judicial Circuit Court. Until this decision is made, the court went further to provide protection against loss, in these words: "The bond set aside by the Justice in chambers is hereby restored, to indemnify the petitioner in injunction from any loss which he may sustain; and the cinema is ordered reopened in keeping with Judge Flomo's order, which we find to be legally authorized."

Judge Flomo's order, addressed to the sheriff of Mont-

serrado County, directed that in view of the receipt of an indemnity bond filed by the respondent Anandani in injunction proceedings, the sheriff should "consider the writ of injunction modified to the extent that the respondent has indemnified the petitioner. Therefore, the respondent is permitted to continue operation of the cinema until otherwise ordered by the court." This order of Judge Flomo was upheld and the cinema ordered reopened until otherwise ordered by the Sixth Judicial Circuit Court. Anything which happened with respect to the cinema which was not in harmony with this order which the Supreme Court had upheld was in disobedience of the Court's mandate sent down to enforce Judge Flomo's order quoted above.

Under circumstances similar to this case, the Court held in *In re Morgan,* 22 LLR 378 (1974), that counsel who advises a client to disobey a Supreme Court mandate in defiance of a judgment of the Supreme Court is in contempt of the Court. In that case Counsellor Morgan, of counsel for Vamply of Liberia, instructed his client not to obey a judgment of the Supreme Court; the Court found the counsellor guilty of contempt in pursuance of information filed by informant Max Branly, and punished him therefor. The same thing has happened in this case, where Counsellor M. Fahnbulleh Jones admitted in his argument before us that he had instructed his client to close the doors of the cinema and prevent its operation in disobedience to, and therefore in defiance of, the definite order of the Court upholding Judge Flomo's decision that the cinema should continue its operation "until otherwise ordered by the Court."

The disobedience of the Supreme Court's mandate and orders have always been frowned upon by this Court. In 1953 when Counsellors Coleman and Brownell applied to Judge Beysolow for injunctive orders to prevent enforcement of the Court's mandate, Mr. Chief Justice Rus-

sell speaking for the majority of the Court said, "Never in the history of this Supreme Court has such a baseless attack been made upon it by counsellors of its bar with the transparent object of bringing the Court into disrepute, disregard, and dishonor, hindering the administration of justice, and belittling the authority, justice, and dignity of this Court. We would be recreant to our trust to tolerate this." *In re Coleman,* 11 LLR 350, 353. The strong terms in which the then Chief Justice expressed his condemnation of lawyers who advise their clients to disobey the mandates of this Court and others, we reiterate in this case; and we will always condemn in the strongest manner each and every such recurrence of defiance and disobedience.

In that case Mr. Justice Shannon had dissented in disagreement with the punishment of suspension for two years adjudged against the two lawyers for the advice they had given their clients, and which the Court had found to be contemptuous of its authority. The Chief Justice in dealing with this phase of the matter said as follows: "With respect to our distinguished colleague's . . . objection, our opinion is that the professional misconduct of Counsellors Brownell and Coleman merits no less a penalty than suspension; for they sought not only to prevent the enforcement and execution of this Court's mandate, but also to disturb, abrogate, and disrupt the very constitutional fabric of this country." *In re Coleman, supra,* 354. We feel, though not so strongly but certainly, disturbed over what Counsellor Jones did in this case by advising his client to disobey an order of this Court, for which we find him guilty of contempt; and to purge himself of which contempt, we hereby amerce him in the sum of $200 to be paid on or before the adjournment for the day on Monday ensuing, the 28th instant, failing the payment of which, he shall be suspended from the practice of law until the fine is paid. Let this be

warning to all practicing lawyers. Because respondents who are not lawyers acted upon advice of counsel, we hereby absolve them from blame.

The Clerk of this Court is hereby ordered to send a mandate to the judge assigned in the Sixth Judicial Circuit Court, commanding him to have the cinema, the subject of these proceedings, reopened immediately in keeping with the previous order given in our judgment of August 1977, which judgment decided the proceedings in certiorari. And the said cinema will continue to operate in accordance with Judge Flomo's order directing the sheriff that "you will please consider the writ of injunction modified to the extent that the respondent has indemnified the petitioner. Therefore, the respondent is permitted to continue operation of the cinema until otherwise ordered by the court." The bond of $18,000 filed by informant and approved by Judge Flomo in the injunction proceedings out of which the certiorari grew, protects the respondent against any loss he may sustain. Costs are ruled against the respondent. And it is so ordered.

Respondents' attorney adjudged guilty of contempt; other respondents not guilty.