

By Mark Hunter

Mason and Mason -v- Northern Territory Housing Commission

Judgment of Bailey J delivered 23 May 1997 (unreported)

TENANCY ACT - WARRANTS OF POSSESSION

On November 13 1996 Mr Hannan SM ordered, pursuant to section 48 of the *Tenancy Act*, that a warrant of possession issue in favour of the Respondent in respect of the house occupied by the Appellants. His Worship found that the Appellants had given "tacit permission" to family members and friends to use their premises and that this permission constituted "consent" for the purposes of the implied term which was read into the Appellant's lease pursuant to section 55 and paragraph 2(c) of Schedule 4 of the *Tenancy Act*. The Court found the Notice to Quit to have been validly issued and duly served.

The Magistrate found that some efforts had been made by the Appellants to exclude from the premises persons causing a disturbance, nuisance and annoyance but that neither co-tenant had in any persevering and enduring way ensured that persons on the premises with their consent did not cause a "disturbance, nuisance or annoyance to adjoining or neighbouring occupiers".

Having found a breach of the lease established, Mr Hannan SM was of the view that he had no discretion in relation to the issue of a warrant of possession.

On appeal, the Appellants contended that to establish a breach of the implied term of the lease (referred to above) it was incumbent upon the Respondent to prove positive consent on the part of the Appellants to the use of their premises by others. The Appellants further claimed that the Magistrate erred in deciding that he had no discretion in relation to ordering the issue of a warrant of possession upon finding a breach of the lease established.

HELD

1. A Local Court is required to order the issue of a warrant of possession

once satisfied that a valid Notice to Quit has been properly served on the lessee and the ground specified in the Notice has been established.

2. "Consent" in the context of paragraph 2 (c) of schedule 4 to the Act may be implied from conduct and may be "hesitant, reluctant, even grudging".
3. The power of the Court to order the issue of a warrant of possession is implicit in section 48(2). If the legislature had intended that there should be a discretion in relation to the issue of a warrant of possession, this would have been expressly provided for in the Act.
4. The appeal is dismissed.

APPEARANCES

Appellants

Counsel: Davis
Solicitors: Darwin Community Legal Centre

Respondent

Counsel: Hunter
Solicitors: Solicitor for the Northern Territory

COMMENTARY

Section 48(2) of the Act gives Local Court a wide discretion to take into account the impact of a warrant of possession on a lessee by giving the Court the power to postpone the date upon which a warrant of possession is to take effect.

Murphy -v- Malony

Supreme Court No 20 of 1997

Judgment of Martin CJ delivered 2 May 1997

CRIMINAL LAW - DRINK DRIVING - SECTION 20A TRAFFIC ACT

The Appellant was disqualified by a Magistrate for five years for driving

with a blood alcohol level of .204. He had already suffered a four month disqualification period which was exclusively referable to this act of driving. An immediate suspension notice had been served on him by the arresting officer pursuant to Section 20A of the *Traffic Act*.

The disqualification period was not backdated by the Magistrate to give credit for this period. The Supreme Court was urged to make such an order. The Court was referred to Section 20A(15) of the Act which obliges a sentencing Justice to "take into account" periods of disqualification under the section.

HELD

1. There is no express power for a period of disqualification to be backdated by a court prior to the date of conviction or finding of guilt.
2. The only circumstance in which a court may "take into account" a Section 20A period of disqualification is where the justice wishes to impose a disqualification period greater than the statutory minimum. In that event, the end result must not be a disqualification period less than the statutory minimum.
3. The appeal is dismissed.

APPEARANCES

Appellant

Counsel: Brugman
Solicitors: CAALAS

Respondent

Counsel: Fox
Solicitors: DPP



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