

1968
*Nov. 18
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CAUSEWAY SHOPPING CENTRE }
LTD. (*Plaintiff*) } APPELLANT;

AND

THOMAS C. MUISE (*Defendant*) RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA,
APPEAL DIVISION

*Contracts—Purported lease signed by parties—Defendant “or his nominee”
named as lessee—Whether document a valid lease.*

The plaintiff company was the owner of a shopping centre, a section of which had been set aside for use as a bowling alley. With a view to leasing this space, the company entered into negotiations with the defendant who expressed the intention that he would not incur any personal liability but would form a company to enter into the lease. The parties signed a document in which the lessee was named as “Thomas C. Muise or his nominee”. Shortly thereafter, the company’s solicitor forwarded to the defendant a copy of the document together with a letter which referred to an interpretation by the landlord permitting the defendant to assign the lease to his nominee. This letter was accepted and confirmed by the defendant.

Subsequently, the defendant’s nominee went into possession and paid rent for a time. It later fell into arrears and finally ceased operations. The plaintiff then brought action against the defendant for the arrears of rent, additional rent required by the lease and for damages. The trial judge dismissed the plaintiff’s action and on appeal the Court of Appeal by a majority decision dismissed the appeal. The plaintiff then appealed to this Court.

Held: The appeal should be dismissed.

APPEAL from a judgment of the Supreme Court of Nova Scotia, Appeal Division¹, dismissing an appeal from a judgment of Bissett J. Appeal dismissed.

*PRESENT: Cartwright C.J. and Martland, Judson, Ritchie and Spence JJ.
¹ (1967), 63 D.L.R. (2d) 26.

C. Denne Burchell, Q.C., and Allan E. Sullivan, for the plaintiff, appellant.

D. Merlin Nunn, for the defendant, respondent.

The following judgment was delivered by

1968
CAUSEWAY
SHOPPING
CENTRE LTD.
v.
MUISE

THE CHIEF JUSTICE (*orally for the Court*):—Mr. Nunn, we do not find it necessary to call upon you. We are satisfied that the document ex. M-1 referred to during the argument as a lease is not a lease because the lessee is named as “Muisse or his nominee”.

Under this document Muise was not liable as a lessee. He subsequently named Olympic as his nominee and this company went into possession and paid rent for a time. No assignment of the purported lease was necessary or attempted to bring about this result. The letter ex. M-2 in referring to an interpretation permitting Muise to assign the lease to his nominee does not transform Muise into a lessee under the original document.

The appeal is dismissed with costs.

Appeal dismissed with costs.

Solicitors for the plaintiff, appellant: Burchell, Sullivan, Smith & Campbell, Sydney.

Solicitor for the defendant, respondent: D. Merlin Nunn, Halifax.
