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## QUASI-CONTRACTS-LANDLORD AND TENANT-RECOVERY FOR OVERPAYMENT OF RENT IN VIOLATION OF STATUTE

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QUASI-CONTRACTS—LANDLORD AND TENANT—RECOVERY FOR OVERPAYMENT OF RENT IN VIOLATION OF STATUTE—Plaintiff occupied a dwelling house from 1928 to 1945, paying \$35 per month rent until September, 1941. In that month, defendant, his landlord, increased the rent to \$75, which plaintiff paid until September, 1945. The property was registered with the Office of Price Administration at a maximum rental of \$35, and this fact was known to plaintiff. Plaintiff's suit to recover the overpayment of \$40 per month was dismissed. On appeal, *held*, affirmed. No statute specifically authorized restitution, and the illegality of the contract precludes restitution in absence of statute. *Jones v. Chennault*, (Mich. 1948) 35 N.W. (2d) 256.

It is generally accepted today that courts will not aid parties to an illegal contract.<sup>1</sup> Exceptions to the rule are widely recognized in the United States,<sup>2</sup> however, especially where the plaintiff is in the class protected by the law making the contract illegal.<sup>3</sup> In the present case, the court does not recognize these exceptions, and makes decisive the plaintiff's knowledge of the illegality of the contract under the Emergency Price Control Act.<sup>4</sup> While decisions in other states have adhered

<sup>1</sup> 17 C.J.S., Contracts, §272; *Mancourt-Winters Coal Co. v. Ohio & Mich. Coal Co.*, 217 Mich. 449, 187 N.W. 408 (1922).

<sup>2</sup> Public policy has been held to justify relief in the following cases: *Wright v. Stewart*, (C.C. Mo. 1904) 130 F. 905 (bet on false footrace); *Duddy-Robinson Co. v. Taylor*, 137 Wash. 304, 242 P. 21 (1926), 21 ILL. L. REV. 48 (1926) (recovery of money paid by corporation for its own stock); *Costanzo Coal Mining Co. v. Weirton Steel Co.* (C.C.A. 4th, 1945) 150 F. (2d) 929 (recovery by seller of difference between contract price and minimum price set by Bituminous Coal Act of 1937).

<sup>3</sup> *Tracy v. Talmage*, 14 N.Y. 162 (1856); *Austin's Admx. v. Winston's Exx.*, 1 Hen. & M. (11 Va.) 32 (1806); *State v. Holston Trust Co.*, 168 Tenn. 546, 79 S.W. (2d) 1012 (1935); 2 CONTRACTS RESTATEMENT §601 (1932). In order to decide whether a plaintiff is within the class protected, the courts look to the title or preamble of the statute or to the persons penalized: *Lefebvre v. Whittier & Co.*, 84 N.H. 105, 146 A. 527 (1929); *Gray v. Roberts*, 2 A. K. Marsh. (9 Ky.) 208 (1820); *Edward v. Ioor*, 205 Mich. 617, 172 N.W. 620 (1919). See also Wade, "Restitution of Benefits Acquired through Illegal Transactions," 95 UNIV. PA. L. REV. 261 (1947); Wade, "Benefits Obtained under Illegal Transactions—Reasons For and Against Allowing Restitution," 25 TEX. L. REV. 31 (1946).

<sup>4</sup> Emergency Price Control Act of 1942, §§1 et seq., as amended, 50 U.S.C. §§901 et seq. (1947).

to the general rule just as strictly,<sup>5</sup> there is much to be said for the opposite conclusion. In the principal case, it may be argued from the stated purposes of the act,<sup>6</sup> and the decisions interpreting it,<sup>7</sup> that the plaintiff was within the general class intended to be protected. This is further indicated by the wording of the prohibitory section<sup>8</sup> and the section on enforcement,<sup>9</sup> both of which are aimed at actions by lessors, not lessees. The Supreme Court of the United States has held that restitution of the rental payment "which rightfully belongs to the purchaser or tenant" is proper in an action to enjoin further violations by the landlord, and that "it is not unreasonable for a court to conclude that such a restitution order is appropriate and necessary to enforce compliance with the Act and to give effect to its purposes."<sup>10</sup> The only indications that the *in pari delicto* doctrine applies to O.P.A. violations are given by two cases, in one of which the plaintiff attempted to bring action under the statutory provisions of the act, while clearly being himself an overcharger;<sup>11</sup> in the other, the plaintiff purposely bought a commodity at an above-ceiling price in order to sue and make a profit.<sup>12</sup> Although plaintiff here did not sustain the burden of proof necessary to maintain a statutory action, it would seem that the Michigan court might well have permitted him to recover in quasi-contract as a member of the general class protected by the statute. Such a decision would have been consistent with at least one earlier Michigan case which enforced an illegal contract to aid the protected party,<sup>13</sup> and would have advanced the policy of the Price Control Act, as stated by the Supreme Court.<sup>14</sup>

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<sup>5</sup> *Ryan v. Motor Credit Co.*, 130 N.J. Eq. 531, 23 A. (2d) 607 (1941) (applying the exception only where plaintiff has been misled or coerced); *Moss v. Moss*, 20 Cal. (2d) 640, 128 P. (2d) 526 (1942); *Maddox v. Yocum*, 109 Ind. App. 416, 31 N.E. (2d) 652 (1941).

<sup>6</sup> 50 U.S.C., §901 (1947): "purposes of this Act are, to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents . . . to protect persons with relatively fixed and limited incomes, consumers, wage earners, investors, persons dependent on life insurance, annuities, and pensions, from undue impairment of their standard of living. . . ."

<sup>7</sup> *Ritchie v. Johnson*, 158 Kan. 103, 144 P. (2d) 925 (1944); *Ross v. Langever*, (Tex. Civ. App. 1944) 180 S.W. (2d) 478 at 480: "The purpose of the said Act . . . is to protect the individual citizen who is compelled to secure a place in which to live against unfair rental charges, during the war emergency. . . ."

<sup>8</sup> 50 U.S.C. §904 (a) (1947): "It shall be unlawful . . . for any person . . . to demand or receive any rent for any defense-area housing accommodations . . . in violation of any . . . order under section 2 . . . or to offer, solicit, attempt, or agree to do any of the foregoing."

<sup>9</sup> *Id.* §925 provides for action by the buyer (lessee) against the seller (lessor) under certain circumstances, but makes no provision for a contrary action. It also provides for action by the price administrator against violators of §904, which applies only to sellers and lessors.

<sup>10</sup> *Porter v. Warner Holding Co.*, 328 U.S. 395 at 400, 66 S.Ct. 1086 (1946).

<sup>11</sup> *Bledsoe v. Coxie Lbr. Co.*, 229 N.C. 128, 48 S.E. (2d) 50 (1948).

<sup>12</sup> *Dunakin v. Southwestern Consumers Co-op Assn.*, 49 N.M. 69, 157 P. (2d) 243 (1945).

<sup>13</sup> *Edwards v. Ioor*, 205 Mich. 617, 172 N.W. 620 (1919) (contract for sale of stock).

<sup>14</sup> *Porter v. Warner Holding Co.*, 328 U.S. 395 at 400, 66 S.Ct. 1086 (1946): "Future compliance may be more definitely assured if one is compelled to restore one's illegal gains; and the statutory policy of preventing inflation is plainly advanced if prices or rents which have been collected in the past are reduced to their legal maximums."