IN THE CROWN COURT AT SNARESBROOK

BETWEEN

LONDON BOROUGH OF ISLINGTON

and

GIAN PAULO ALIATIS

APPLICATION TO DISMISS

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1. Mr Aliatis faces a five-count indictment, although it is understood that there is a question as to whether the Crown will proceed with Count Two. This application submits that all five counts should be dismissed.

2. With the exception of Count Five, which suffers from a complete failure of evidential basis (see below), all the counts turn upon matters of construction of the law of landlord and tenant, and land law. For that reason alone, the resolution of which requires a relatively complicated construction of the relevant mixed questions of fact and law (*AG Securities v Vaughan* [1988] UKHL 8), these issues are inappropriate matters for trial on indictment. See Lord Oliver at p15 "Where, however, the premises are such as, by their nature, to lend themselves to multiple occupation and they are in fact occupied in common by a number of persons under different individual agreements with the owner, more difficult problems arise."

3. The Court is invited to have regard to the judgment of Lord Donaldson MR in *Aslan v Murphy* [1990] 1 WLR 766 (decided therefore after the Housing Act 1988 came into force) at 772H, approving the trial judge's citation of Bingham LJ in *Antoniades v Villiers* [1988] 3 WLR 139 at 147 – 8, "It is not a crime, nor is it contrary to public policy, for a property owner to license occupiers to occupy property on terms which do not give rise to a tenancy."

4. It is submitted that on their true construction, as pleaded, these matters are civil in their nature and there is simply no evidence, as required by Count One, of dishonesty. These were commercial agreements whose terms were evident on the face of the documents. Whether or not those terms were effective is not a matter for the criminal courts.

5. Even were it to be accepted as a matter that is capable of litigation before a criminal court (though how the construction of the land law issues is to be performed by a judge sitting with a jury is unclear), the following issues demonstrate that no jury, properly directed, could be sure that licences had not been created. That matter is determinative of Counts One to Four – it is directly in issue in Count Four and is accepted by the Crown to be determinative of Counts One and Three [see Statement of Simon Martin at 334 -5. It is not accepted that his opinion is admissible; it is however accepted for the purposes of this argument that he has correctly identified some of the factors to be considered in the construction of lease versus licence.]

6. The central issue in the construction of lease versus licence is the question of exclusive possession (rather than exclusive occupation, the issues are not synonymous – exclusive possession consisting of *inter alia* exclusive occupation and periodic rental payment).

7. The only evidence in this case that touches on the issue is that there was not exclusive possession. Simon Martin is simply factually incorrect when he asserts that 'the occupiers had their own room and key to the room (exclusive occupation)'. He appears to have confused the fact that the members were given keys to the relevant houses (defined as the "Property" in the membership agreement), of which the rooms formed a part, with there being locks on the doors of the rooms. The latter is incorrect. It is in fact a specific matter of complaint by the witnesses that they **did not** have locks on their rooms. It should be noted that the evidence covers (without great clarity) several properties.

8. The membership agreement sets out (at 10.4) that occupied bedrooms may be secured by installing a padlock with a code which is provided to Club Management in order to allow access. Paragraph 10.1 provides the right to enter without notice.

9. Karolina Jasienska (at 19): "Maria then told us we would need to buy a padlock for the door to our room as there were no locks on the doors. She also said that Lifestyle Club could go in there whenever they wanted."

10. Mattia Pillonca (at 34): "Maria then gave me the keys to the property and told us that we needed to buy a padlock for the room as it could not be locked from the outside."

11. Federico Sardella (at p84): "The door to our room was not locked and was wide open."

12. Elena Savoia (at 153): "Inside, there was no lock on the bedroom door but the door was open and we went inside."

13. Given that these witnesses did not take up occupation they cannot assist the Crown further as to exclusivity.

14. Soraya Hu (at 167) is silent as to exclusive occupation or possession of their room and gives evidence that their occupation was subject to variation in that they were able *per* the intention of the membership agreement to move rooms. She also gives evidence that the membership agreement stipulation as to entry for cleaning was not a sham. A further factor in the determination of lease or licence is whether there is provision of services such as cleaning (*Street v Mountford* [1985] 1 A.C. 809 at 817H – 818A).

15. Veronika Barat (at 196) is silent on the issue of exclusive occupation or possession and appears only to have been at the property for 1 month and so cannot assist the Crown as to detail of occupation.

16. Magnus Manhart (at 212) did not enter into occupation and cannot assist the Crown.

17. It is accepted that possession of keys (or the code to the padlock) by a landlord or their agent (or the Club Management) is not, in land law, determinative of the issue of exclusive possession. The question is what does the arrangement show in respect of the

parties' true intention and what does the evidence reveal. In *Aslan* the argument as to possession of keys failed in the Court of Appeal because the trial judge had found as a fact that virtually no services had been provided. In this case there is simply *no* evidence provided by the Crown to address a fundamental issue as to the correct construction of the interest (if any) provided by the membership agreement. Counts One to Four must therefore be dismissed.

18. Count Five appears misconceived. The allegation is that Lifestyle Club Ltd purported to be a member of an effective complaint resolution scheme between 1 October 2017 and 30 April 2018 when it was not. The evidence of Sean Hooker at p347 is that between 13 September 2017 and 26 November 2018 Lifestyle was a member of The Property Redress Scheme, the government authorised consumer redress scheme. The evidence of Magnus Manhart further shows that as at April 2019 complaints about Lifestyle Club were considered by the PRS (and that there is no distinction between Lifestyle Club Ltd and Lifestyle Club LSC Ltd for these purposes). This count must also therefore be dismissed.

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