



If You Can't Beat 'Em, Sue 'Em

For St. Louis Cardinals fans, the thought of the hometown team moving to another city is confusing and painful, however, that could have been the result had the Supreme Court of Missouri ruled differently in the case of *Dodier Realty & Inv. Co. v. St. Louis Nat'l Baseball Club, Inc.*, 238 S.W.2d 321 (Mo. banc 1951).

From 1902 to 1953, St. Louis had both American League and National League franchises. Although the Cardinals and the St. Louis Browns were mostly mediocre clubs until 1920, the Cardinals would soon begin a rise to prominence which has produced 10 World Series Championships and 17 National League Pennants. The Browns started their slide into the cellar at about the same time, and soon people across America would joke about St. Louis being "first in booze, first in shoes, and last in the American League."

After a brief period of relative prosperity, including winning the American League Pennant in 1944 before losing to the Cardinals in the only all-St. Louis World Series, by 1946, the Browns returned to their losing ways and to last place in attendance in the American League where they would remain every year from 1946 to 1953, averaging slightly over 350,000 fans a year during this period. The Cardinals, on the other hand, averaged just under 1,100,000 in attendance during the same period. By the late 1940s, the Browns were in difficult financial straits and could not compete financially, often resorting to selling their best players to keep afloat.

Although the Cardinals were the primary draw at Sportsman's Park, they were only a tenant in the stadium, and after 1947, when the owner of the Browns, Richard Muckerman, purchased Sportsman's Park from the estate of a previous Browns' owner, the Cardinals effectively

became the Browns' tenant. Shortly after this, a corporate transaction by the Cardinals would put that tenancy at risk and give the Browns an argument that the Cardinals should have their lease forfeited.

In 1937, the St. Louis National Baseball Club (the Cardinals) entered into a fourteen year lease



Mark Murray

with Dodier Realty for the right to play their home games at Sportsman's Park. *Dodier*, 238 S.W.2d at 322. In January 1948, the Cardinals' corporate entity merged with National Sports, Inc. under Missouri's General Business and Corporation Act. *Id.* at 322. National Sports, Inc., the surviving corporation, also changed its name in connection with the merger to St. Louis National Baseball Club, Inc. *Id.*

Dodier filed suit against the Cardinals, seeking ejectment and damages in the amount of \$222,500, alleging the Cardinals violated the lease's provisions restricting assignment of the lease by entering into the merger. *Id.* at 322. The lease provided that the tenant would "not assign the right hereby granted to it, without the previous written consent of the [landlord] . . ." *Id.* at 323 (footnote 1). While this dispute was pending (and after the parties agreed to a sort of standstill agreement to maintain the status quo until resolution of the litigation), a second dispute arose over whether the Cardinals should receive a credit against amounts owed for the

upkeep and maintenance of Sportsman's Park. *Id.* at 325. The American League Baseball Company of St. Louis, the entity that owned the Browns, was also a tenant of Dodier, and the Browns were brought into the suit when the Cardinals filed a counterclaim against them relating to the claimed credit since the Browns were responsible for stadium upkeep. *Id.* at 325-26.

On appeal, Dodier argued the Court should interpret the definition of "assign" broadly, and that the merger was a voluntary act by which the Cardinals had transferred the tenant's lease rights, violating the lease. *Id.* at 323. After noting that forfeitures of leaseholds are not favored at law, the Court sustained the decision of the lower court in favor of the Cardinals, and found that the surviving corporation in the merger succeeded to the tenant's rights by operation of law and no assignment of the lease had occurred. *Id.* at 323, 325. Disregarding the argument that there was a voluntary assignment because the Cardinals had voluntarily undertaken the steps to effect the merger, the Court approvingly cited a case which held that "few if any transfers ever take place 'wholly by operation of law'" because all transfers result from a human-caused chain of events. *Id.* at 323 (citation omitted). Ultimately, the Court determined that Missouri's merger statutes worked a dissolution of the non-surviving corporation in the merger, and that the corporation's assets were transferred to the surviving corporation, all by operation of law and force of statute. *Id.* at 325. The lower court's decision in the Cardinals' favor on the rent credit issue was also sustained, as the Court upheld the lower court's order to pay the disputed amount to Dodier, that Dodier could not pursue a lease forfeiture

because of the dispute, and that the Cardinals could pursue recoupment of the funds in a separate action. *Id.* at 327.

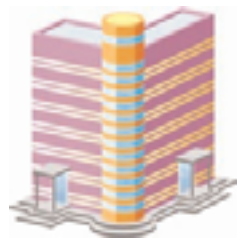
In April of 1951 the Court denied Dodier's motion to rehear the case. By July of 1951, the Browns were sold to Bill Veeck, whose strategy was to try to run his tenant, the Cardinals, out of town, using his position as landlord to take actions to annoy them, including preventing the Cardinals' owner from using the owner's box and festooning the stadium with pictures of former Browns. After the Cardinals were sold to Anheuser Busch, Inc. and August Busch, Jr., Veeck knew he could not win the battle, and in 1953, he sold Sportsman's Park to the Cardinals. After the 1953 season, the Browns were sold and headed east to greener pastures as the Baltimore Orioles.

The Dodier case remains good law today. Who knows: in 1937, if the lease between the Cardinals and Dodier was drafted to prevent "any assignment, voluntarily or by operation of law or otherwise", the decision by the Court could have been quite different and the Cardinals could have found themselves without a home and forced to move to Milwaukee, Houston, Los Angeles, Kansas City or some other city hungry for major league baseball in the 1950s. □



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