

JAMAICA

IN THE COURT OF APPEAL

MISCELLANEOUS APPEAL NO: 6/78

BEFORE: The Hon. Mr. Justice Melville, J.A.
The Hon. Mr. Justice Rowe, J.A.
The Hon. Mr. Justice White, J.A. (Ag.)

BETWEEN MARJORIE E.R. BROWN-YOUNG APPELLANT
A N D DAHLIA CODNER RESPONDENT

IN THE MATTER OF No. 4 Acorn Place
Kingston 8, in the parish of St. Andrew

A N D

IN THE MATTER of the Rent Restriction
Act, 1979.

Mr. R.N.A. Henriques and Mr. Norman Wright for the Appellant.

June 13, July 25, 1980

ROWE J.A.

On June 13, 1980 at the conclusion of the arguments we allowed the appeal and ordered that there be a new hearing. We decided further that as the question of procedure raised on the appeal was one of general importance we would put our reasons in writing and this we now do.

At the instance of the tenant, by application dated November 15, 1977, the Rent Assessment Board of the Corporate area required the landlord/appellant to make an application to the Board for the determination of the Standard Rent of premises 4 Acorn Place,

Kingston 8. She complied.

On June 5, 1978 the Board convened to hear the application. The appellant, herself an attorney at law, appeared in person. The record discloses that after the appellant was sworn the Chairman of the Board read to her the Inspector's Report and asked her questions in relation to that Report. When the appellant completed her testimony, Mr. Cooke a realtor for 20 years and a duly appointed Valuator for the Rent Assessment Board was called. He gave evidence of his valuation based upon a replacement value as at 1977 although he had visited the premises for purposes of making his valuation on May 29, 1978. There was a dispute between the appellant and the Valuator as to the date on which the replacement value should be calculated. In the final analysis the Valuator did some arithmetic and came up with some figures which suprisingly the Board accepted and acted upon and literally rubber stamped for the purposes of fixing the standard rent.

Before things got to that sorry pass, the appellant had objected to the method by which the Valuator had proceeded and was proceeding to value her premises. She said to the Board:

"Any valuation which is to take effect for the next five years must take into consideration the result of devaluation, the present cost of cement, paint, steel and other building materials. It is the practice of the Board to present the Inspector's Report on the morning of the hearing. Mr. Chairman I wish to object on that ground because it impedes me in preparing my case for today. I had to seek advice in preparing my valuation".

To this the Chairman replied:

"It is the practice of the Board that the Valuator gives his evidence on the morning of the hearing. Landlords are allowed to bring their own Valuators before the Board to give their own evidence. You being a lawyer, I think you should know that."

The dialogue continued thus:

"Mrs. Young: I think the valuation should be based on today's value. The valuator I would like to have here, is not available today. I am asking that the matter be adjourned part-heard so that I could call my own valuator.

"Chairman:

No, I am sorry. I would think that the valuator of this Board is in the position of an Expert Witness and I wonder if you can tell me of a case of an Expert Witness who puts his evidence in writing before the matter is heard".

The Rules of Procedure by which Rent Assessment Boards were operate/established in 1944 by the Rent Restriction Rules 1944 published in the Jamaica Gazette Supplement on November 23, 1944.

Rule 11 provides:

"Subject to the provisions of this Law and these Rules the practice and the procedure in an Action in the Resident Magistrate's Court shall with the necessary modifications apply to proceedings under the Rent Restriction Law, 1944".

Proceedings between party and party in the Resident Magistrate's Court are adversary proceedings in which the Resident Magistrate is given no statutory authority to call witnesses of his own motion to establish facts in support of the cause of one or other party. Amendments to the Rent Restriction Act and especially the provision which now appears as section 14 (1) of that Act appear to modify the similarity between the procedure in the Resident Magistrate's Court and that before the Rent Assessment Board by directing that the Valuation Officer appointed for the purposes of Rent Restriction Act and who has carried out investigations as to the value of controlled premises:

"Shall give, before a Board, evidence in relation to the value of any controlled premises in respect of which the Board wishes to determine the standard rent".

In Miscellaneous Appeal 9/79 E.A. McCaffrie, landlord of 1A Lincoln Road, Kingston 5, in which judgment was given by the Court of Appeal on November 2, 1979, the Court proceeded on the basis that the Rent Assessment Board had power of its own motion to call the Valuator to give evidence of his valuation.

Robinson P. said:

"To assist a Board in this aspect of its tasks provision is made for the appointment of Valuation Officers whose functions shall be, inter alia, to give evidence before a Board in relation to the value of any controlled premises in respect of which the Board wishes to determine the standard rent. See Section 14 (1)"

Counsel for the appellant mentioned en passant that there are several pending appeals where it will be argued that the Rent Assessment Boards have no power of their own motion to call Valuators to give evidence. This point was not argued before us and as at present advised we are prepared to follow the attitude adopted by the Court in McCaffrie's case, supra.

A Valuator called to give evidence by virtue of section 14 (1) of the Act is not a member of the Board and his evidence, however expert he may be, is subject to assessment and evaluation by the Board. The Board should never appear to be abdicating its functions to decide, in favour of its Valuator. If the Board is proposing to rely upon the evidence of the Valuator as one of the prime sources of fact upon which to determine the standard rent, then it would seem only fair that the persons who might be affected by that evidence should have a full and adequate opportunity to familiarize themselves with such evidence and to come before the Board prepared to accept or to challenge the valuation.

A landlord who is hearing the quantum of the valuation and the basis of that valuation for the very first time when the Valuator goes into the witness box is at a serious disadvantage and should be afforded every opportunity by the Board to cross-examine and to adduce contradictory evidence if he so chooses. In the instant case, the appellant applied for an adjournment to bring additional evidence before the Board. The adjournment ought to have been granted, firstly because the Valuator had acted upon patently wrong principles in arriving at his valuation and secondly because natural justice demand that the landlord be given a reasonable opportunity to present her case.

This Court considers that justice can only be done between the parties who have an interest in proceedings for the determination of the standard rent of controlled premises by a Rent Assessment Board under the Rent Restriction Act, if the parties are supplied by the Board with a copy of every Inspector's or Valuator's Report which the Board proposes to make use of in determining such standard rent. Such reports should be issued along with the notice of hearing of the application as provided for in Rule 5 of the Rent Assessment Rules, 1944.