

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MR JUSTICE BROOKS P
THE HON MISS JUSTICE SIMMONS JA
THE HON MR JUSTICE LAING JA (AG)**

PARISH COURT CIVIL APPEAL NOS COA2021PCCV00014 & 15

BETWEEN	CONSTANT SPRING GOLF CLUB	APPELLANT
AND	COLLECTOR OF TAXES (FOR THE PARISH OF SAINT ANDREW Constant Spring Revenue Service Centre)	RESPONDENT

**Kevin Williams and Russell Cooper instructed by Grant Stewart Phillips & Co
for the appellant**

Mrs Cecelia Chapman Daley and Mrs Noelle Gayle Miller for the respondent

28 September 2022 and 10 March 2023

SIMMONS JA

[1] On 28 September 2022, this court heard submissions from counsel for both parties and at the conclusion of the hearing we made the following orders:

- “1. The appeals are allowed.
2. The judgments and orders of the learned parish judge are set aside.
3. The matters are remitted to the Parish Court for the liability of Mr. Nigel Davy to be determined pursuant to section 52(4) of the Tax Collection Act.
4. Each party to bear its own costs.”

[2] On that date, we promised to put our reasons in writing. This judgment is a fulfilment of that promise.

[3] These appeals brought by the Constant Spring Golf Club ('the appellant'), challenged the orders made on 22 March 2021 by Her Honour Mrs Tracy-Ann Robinson, Judge of the Parish Court (Ag) for the Kingston and Saint Andrew Civil and Tax division ('the learned judge').

[4] On that date, final orders were made against the appellant in relation to information nos 705/2016 and 706/2016 that were laid against it for outstanding property taxes for properties located at 154 Constant Spring Road and Olivier Road, Kingston 8 in the parish of Saint Andrew, respectively.

[5] In relation to information no 705/2016 a final order was made in the sum of \$4,605,153.07. That sum was to be paid by 36 monthly instalments of \$127,920.92 commencing on or before 31 March 2021 and the final payment to be made on or before 28 February 2024.

[6] Where information no 706/2016 is concerned, the appellant was ordered to pay the sum of \$4,905,153.07 by 36 monthly instalments of \$136,254.25 commencing on or before 31 March 2021 and the final payment to be made on or before 28 February 2024. In the event of a default in the payment of the judgment debt, the appellant's directors, who were named, were liable to be imprisoned for 15 days.

Background

[7] The two parcels of land with which these matters are concerned are owned by the Government of Jamaica and have been leased by the appellant. They are identified by valuation numbers 105C-2W-19-001 and 105C-2W-20-001.

[8] In or about 2015, the appellant became aware of a demand from the Tax Administration of Jamaica ('TAJ') for the payment of outstanding property taxes for both parcels of land for the period 2010 to 2016. The appellant engaged the TAJ in discussions

to address the issue and applied to the Land Tax Relief Board ('the Board') for property tax relief.

[9] There was no progress in the matter and in 2017, the summonses were laid by the respondent, the Collector of Taxes for the Parish of Saint Andrew, against the appellant for outstanding property taxes, penalties and interest for the period 2010 to 2017.

[10] By virtue of information and complaint no. 705 of 2016 (valuation number 105C-2W-19-001), the appellant was notified that it was required to pay outstanding property taxes in the sum of \$11,217,128.90 being the amount of such taxes, duties and surcharge which was owed to the respondent.

[11] Information and complaint no. 706 of 2017 (valuation number 105C-2W-20-001), notified the appellant that it was required to pay outstanding property taxes in the sum of \$11,217,128.90 being the amount of such taxes, duties and surcharge which was owed to the respondent for the period 2010 – 2017. Mr Nigel Davy (the then president of the appellant) was summoned to answer to both informations.

[12] The matters were first listed before the Parish Court on 27 February 2017. On that date, a warrant was ordered and stayed for Mr Nigel Davy until 27 March 2017. The subsequent chronology of events is as follows:

- i. On 27 March 2017 the matters were adjourned to 22 May 2017. On May 22 2017, an interim consent order was made requiring the appellant to pay \$100,000.00 on or before 25 June 2018. Mr Nigel Davy failed to appear and a bench warrant was ordered for his arrest.
- ii. On 24 July 2017, the matters were adjourned to 23 October 2017 for the respondent to provide an update on the appellant's application to the Board for a waiver.

- iii. On 22 January 2018, the learned judge was advised that the appellant was awaiting the decision of the Board in respect of its application for tax relief.
- iv. On 22 October 2018, the court was advised that Mr Frank Jackson was the appellant's new president. An interim consent order was made requiring the appellant to make a payment of \$150,000.00 in two equal monthly instalments of \$75,000.00 to be paid on or before 31 December 2018.
- v. Between 10 January 2019, when an interim consent order was made requiring the appellant to make a payment of \$170,000.00 in two equal monthly payments of \$85,000.00 on or before 28 February 2019, and 11 February 2021 there were approximately nine mention dates. On some of those dates, interim consent orders for payments were made.
- vi. On 11 February 2021 when the matters came before the Parish Court the appeal to the Minister of Finance ('the Minister') had not been determined and they were adjourned to 22 March 2021 for an update pertaining to the appeal to the Minister and a "reconciliation in relation to both matters". The learned judge was advised that the appellant was experiencing financial difficulties due to the onset of the pandemic and the decline in fee collection from members of the club.
- vii. On 22 March 2021, counsel for the respondent informed the learned judge that the appellant had been granted relief from the Minister and provided the court with the sums that were now outstanding in respect of both claims. The learned judge made the following orders in respect of information no 705:

“Final Order for the sum of \$4,605,153.07 to be paid in 36 equal monthly instalments of \$127,920.92. Payments to commence on or before 31.3.2021 and final payments [sic] to be made on or before 28.2.2024. In default 15 days for Clifton Cameron, Frank Jackson, Bruce Lopez, John Leiba, Allison Reid, Linval Freeman, Robert Hill, Pier John Holmes, Shawn Garbutt and Vikman [sic] Dhiman.”

Pertaining to information no 706:

“Final Order for the sum of \$4,905,153.07 to be liquidated in 36 equal payments of \$136,254.25. Payments to commence on or before 31.3.2021 and final payment to be made on or before 28.2.2024. In default 15 days for Clifton Cameron, Frank Jackson, Bruce Lopez, John Leiba, Allison Reid, Linval freeman, Robert Hill, Pier John Holmes, Shawn Garbutt and Vikman [sic] Dhiman.”

The notices and grounds of appeal

[13] The appellant, aggrieved by these decisions, filed notices of appeal on 6 April 2021 in respect of information nos 705 of 2016 and 706 of 2016. The grounds of appeal for 705/2016 are as follows:

“a. The learned Parish Court judge erred by failing to find that the Appellant’s President/ Managing Director is its responsible officer in keeping with section 52(3) of the Tax Collection Act;

b. The learned Parish Court judge erred by failing to find that there were bonafide reasons as to why the Appellant’s responsible officer/ Managing Director failed to discharge the Appellant’s property tax liability in the sum of \$4,605,153.17 by making payment in full or by consenting to a final order on the terms proposed by the Respondent on the 22nd March 2021, in circumstances where, inter alia:

- i. Pursuant to section 9 of the Land Taxation (Relief) Act, the Appellant appealed to the Minister of Finance from the Land Tax Relief Board’s decision which has not yet been disposed of;

- ii. the Appellant sought to, in any event and in the interim, negotiate with the Respondent to arrive at a feasible compromise, having regard to the Appellant's finances and its efforts to improve its cash flow despite the onset of the coronavirus pandemic; and
- iii. the Appellant is not in a financial position to make the payments during the time and manner being contemplated by the Respondent.

c. The learned Parish Court judge erred by imposing joint and several liability for the payment of the Appellant's property taxes and penalties on all of the Appellant's directors, namely: Mr John Leiba, Mr Clifton Cameron, Mr Linval Freeman, Mr Bruce Lopez, Ms Alison Reid, Mr Vikram Dihman, Mr Sean Garbutt, Dr PJ Holmes and Mr Robert Hill, in the circumstances where:

- i. they did not overrule or otherwise prevent the Appellant's President/Managing Director from carrying out his duties under the Tax Collection Act;
- ii. in any event, there were bonafide reasons from [sic] preventing payment in full of the Appellant's property tax and penalties in the sum of \$4,605,153.17 or by consenting to the final orders proposed by the Respondent on the 22nd March 2021, because the payment(s) cannot be made in the circumstances; and
- iii. not all directors named in the learned Parish Court judge's order were aware of or party to the Appellant's decision not to consent to the final orders which were proposed by the Respondent on the 22nd March 2021.

d. The learned Parish Court judge erred by making a final order instead of an interim order for payment of the Appellant's property taxes and penalties in the sum of \$4,605,153.17, in circumstances where the Appellant's appeal to the Minister of Finance from the decision of the Land Tax Relief Board remains extant."

[14] The grounds of appeal for 706 of 2016 were as follows:

"a. The learned Parish Court judge erred by failing to find that the Appellant's President/ Managing Director is its responsible officer in keeping with section 52(3) of the Tax Collection Act;

b. The learned Parish Court judge erred by failing to find that there were bonafide reasons as to why the Appellant's responsible officer/ Managing Director failed to discharge the Appellant's property tax liability in the sum of \$4,905,153.07 by making payment in full or by consenting to a final order on the terms proposed by the Respondent on the 22nd March 2021, in circumstances where inter alia:

- i. Pursuant to section 9 of the Land Taxation (Relief) Act, the Appellant appealed to the Minister of Finance from the Land Tax Relief Board's decision which has not yet been disposed of;
- ii. the Appellant sought to, in any event and in the interim, negotiate with the Respondent to arrive at a feasible compromise, having regard to the Appellant's finances and its efforts to improve its cash flow despite the onset of the coronavirus pandemic; and
- iii. the Appellant is not in a financial position to make the payments during the time and manner being contemplated by the Respondent.

c. The learned Parish Court judge erred by imposing joint and several liability for payment of the Appellant's property taxes and penalties on all of the Appellant's directors, namely: Mr John Leiba, Mr Clifton Cameron, Mr Linval Freeman, Mr Bruce Lopez, Ms Alison Reid, Mr Vikram Dihman, Mr Sean Garbutt, Dr PJ Holmes and Mr Robert Hill, in the circumstances where:

- i. they did not overrule or otherwise prevent the Appellant's President/Managing Director from carrying out his duties under the Tax Collection Act;
- ii. in any event, there were bonafide reasons from [sic] preventing payment in full of the Appellant's property tax and penalties in the sum of \$4,905,153.17 or by consenting to the final orders proposed by the Respondent on the 22nd March 2021, because the payment(s) cannot be made in the circumstances; and

iii. not all directors named in the learned Parish Court judge's order were aware of or party to the Appellant's decision not to consent to the final orders which were proposed by the Respondent on the 22nd March 2021.

d. The learned Parish Court judge erred by making a final order instead of an interim order for payment of the Appellant's property taxes and penalties in the sum of \$4,905,153.17, in circumstances where the Appellant's appeal to the Minister of Finance from the decision of the Land Tax Relief Board remains extant."

[15] The orders that were sought in respect of both appeals are as follows:

"a. The learned Parish Court Judge's order made on the 22nd March 2021 be set aside;

b. The matter be stayed, pending the disposal of the Appellant's appeal to the Minister of Finance under section 9 of the Land Taxation (Relief) Act.

c. Costs in the appeal be awarded to the Appellant, such costs to be taxed if not agreed.

d. Any further or other relief that this Honourable Court deems fit."

[16] The issues that arose from the grounds of appeal are:

(i) Whether the learned judge ought to have made the final orders in light of the pending appeals to the Minister (grounds b and d).

(ii) Whether the learned judge erred when she imposed liability to pay the outstanding sums on the directors (grounds a and c).

Whether the learned judge ought to have made the final orders in light of the pending appeals to the Minister? (grounds b and d)

Appellant's submissions

[17] Counsel for the appellant, Mr Kevin Williams, submitted that the learned judge erred in making final orders where there is an existing appeal against the decision of the Board to the Minister pursuant to section 9 of the Land (Taxation) Relief Act ('Taxation Relief Act').

[18] He indicated that the appellant had received a partial waiver of the outstanding property taxes from the Board on 23 September 2019 but was still dissatisfied and had therefore appealed to the Minister. The appellant, he said, was awaiting the decision of the Minister at the date when the orders were made and had yet to receive any decision pertaining to his appeal. Counsel submitted that the Minister has the discretion to overrule the decision of the Board and grant a larger or complete waiver of the property tax. He argued that if that was done, there would be no basis for the decision of the learned judge to make a final order as the Minister's decision would be final and conclusive.

[19] Counsel submitted further that the Parish Court was informed of the appeal and the fact that the learned judge's attention was not directed to that information on 22 March 2021, was not the appellant's fault. The records of the Parish Court would have contained that information. In the circumstances, the proper course was for the learned judge to either (i) continue to hold over the matters until the decision of the Minister became available, or (ii) stay both matters until such time as the Minister's decision was received. In this regard, it was stated that when an appeal is made pursuant to section 9(1) of the Taxation Relief Act, the Minister is by section 9(2) mandated to consider and issue a decision. The appellant, it was argued, cannot control the efficiency of the appeal process and can only continue to seek updates on the status of the appeal until its determination.

Respondent's submissions

[20] Counsel for the respondent, Mrs Cecelia Chapman Daley, submitted that the appellant has a responsibility to pay its property taxes and cannot rely on its impecuniosity to be absolved from this liability. This is especially so in circumstances where the appellant had been granted relief of 50% of the taxes owed. She argued that based on the principle of fairness, the outstanding taxes ought to be paid by the appellant.

[21] Counsel also submitted that the matters were of some "vintage" and the learned judge was empowered by section 16 of the Justices of the Peace Jurisdiction Act to make the orders that are the subject of this appeal.

[22] Further, the appeal against the decision of the Board did not prohibit the learned judge from making a final order, as it is not the sum of the taxes that are being appealed but rather the extent of the relief that was granted. Counsel stated that if the matter is remitted to the Parish Court, Mr Nigel Davy would be the one liable for the settlement of the outstanding taxes.

Analysis

[23] Section 9 of the Taxation Relief Act provides as follows:

"9(1) Where an applicant for a relief certificate or a derating certificate is dissatisfied with a decision of the Board in relation to the application, **he may within the prescribed time and in the prescribed manner appeal to the Minister.**

(2) The Minister shall consider every appeal made under subsection (1) at such time and in such manner either in the presence or absence of the appellant as the Minister considers appropriate and, having regard to the principles set out in or pursuant to this Act, **shall make such order in relation to such appeal as the Minister may think fit and for the purpose of giving effect to the order may exercise any powers of the Board under this Act.**

(3) Every decision of the Minister upon any appeal made under this section shall be final and conclusive.”
(emphasis supplied)

[24] The appellant who was dissatisfied with the decision of the Board sought to engage the appellate procedure before the Minister. However, to date, there has been no indication that the Minister has considered the appeal or rendered a decision.

[25] Section 2 of the Property Tax Act, mandates the payment of property taxes every year on all property specified in the First Schedule of that Act. Section 4 states that the said taxes are payable by the person in possession of the property on the date when the taxes become due. Pursuant to section 6, where the taxes have not been paid in the month of April of the year when they became due, a penalty may be “collected and recovered as if it were property tax”.

[26] Section 27 of the Tax Collection Act, provides for the recovery of sums claimed for outstanding taxes, by the Collector of Taxes or Assistant Collector of Taxes. The section states:

“27. In addition to the other remedies given by this Act or any other enactment relating to taxes, the Collector of Taxes or Assistant Collector of Taxes, may proceed for the recovery of any amount claimed for any taxes, and for the penalty thereon, in a Resident Magistrate’s Court and such proceedings may be brought in the name of such Collector of Taxes, or Assistant Collector of Taxes, who shall described [sic] himself by his name and office and such proceedings shall not abate by the death, removal, retirement or resignation of such Collector of Taxes, or Assistant Collector of Taxes, but may be carried on and enforced by and in the name of his successor.”

[27] In this matter, there is no dispute that the sums claimed were due and payable by the appellant. The final orders were challenged on two bases. The first is that the learned judge acted prematurely when she made those orders. The second is concerned with whether the consequential orders ought to have been made against the appellant’s directors and is addressed later in this judgment commencing at para [41].

[28] The effect of the engagement of the appellate process under section 9 of the Taxation Relief Act is, in our view, analogous to that which obtains when an appeal is filed in this court. There is no automatic stay of the judgment or order that is the subject of the appeal. Similarly, there was no automatic stay of the proceedings in the parish court consequent upon the appeal to the Minister. In this regard, we noted that there is no provision in the said Act which provides that an appeal to the Minister operates as a stay of proceedings before the court. Had that been so, the court's jurisdiction to hear and determine the matters would have been ousted.

[29] In **Paul Beswick v The Queen** [1987] UKPC 22, the meaning of the term "lack of jurisdiction" was discussed. Lord Griffiths who delivered the decision of the Board stated at pages 2-3:

"The expression the magistrate has 'no jurisdiction' is a phrase used by the courts to cover a very wide variety of circumstances in which it is improper for a particular magistrate to adjudicate in a particular case... In its narrow sense the phrase covers the situation in which a magistrate has no power to enter upon a hearing; he may lack territorial jurisdiction or the offence may be one which he has no power to deal with and must be tried by a higher court. In *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147 at page 171 Lord Reid expressed the view that it would be better to confine the use of the expression 'no jurisdiction' to this narrow meaning.

The expression 'the magistrate had no jurisdiction' is however frequently used in a broader sense to cover cases in which although there was power to enter upon a hearing the decision should nevertheless be quashed because it would not be fair to allow it to stand..."

[30] In that case, the court dealt with the issue of whether His Honour Mr Lopez had the jurisdiction to accept the appellant's change of plea to guilty and impose a sentence, in circumstances where the matter was part heard before Her Honour Miss Francis. Briefly, the appellant Mr Paul Beswick was charged for disobeying a traffic light in breach

of the Road Traffic Act. He pleaded not guilty before Her Honour Miss Francis and evidence was taken from one prosecution witness before the matter was adjourned.

[31] Her Honour Miss Francis thereafter commenced a period of leave and in her absence the matter came before His Honour Mr Lopez before whom the appellant changed his plea to guilty. The plea was accepted and a fine was imposed. The fine was paid immediately. The learned judge then changed his mind as to the appropriateness of that course and ordered the summons to be re-issued, remitted the fine and vacated his order.

[32] On a further hearing date before Her Honour Miss Francis, the appellant entered a plea of *autrefois convict* on the basis that His Honour Mr Lopez was *functus officio* and had no jurisdiction to make the second order. Her Honour Miss Francis ruled that the proceedings before His Honour Mr Lopez were a nullity and thereafter, convicted and sentenced the appellant. The Court of Appeal upheld the conviction on the ground that His Honour Mr Lopez had no jurisdiction to hear and determine the case.

[33] The Board found that His Honour Mr Lopez on the first occasion had exercised his discretion within his jurisdiction and agreed with the appellant that His Honour Mr Lopez had no jurisdiction to make the second order and allowed the appeal.

[34] In the instant case, the learned judge by virtue of section 27 of the Tax Collection Act had the jurisdiction to deal with the matters. The appellant had, in the absence of any authority, urged this court to find that the learned judge ought to have refrained from making a final decision in light of the pending appeal before the Minister. The appellant's complaint was in our view, not concerned with whether the learned judge had the jurisdiction to make the orders but with the manner in which she exercised her discretion.

[35] The principles that guide this court in matters concerned with the exercise of a judge's discretion are to be gleaned from the judgment of Lord Diplock in **Hadmor Productions Ltd and Others v Hamilton and Others** [1982] 1 All ER 1042. Those

principles have been endorsed by this court in several cases. This court will only set aside a decision based on the exercise of a judge's discretion if, as stated by Morrison JA (as he then was), in **The Attorney General of Jamaica v John MacKay** [2012] JMCA App 1, at para. [20]:

"...it was based on a misunderstanding by the judge of the law or of the evidence before him, or on an inference - that particular facts existed or did not exist - which can be shown to be demonstrably wrong, or where the judge's decision 'is so aberrant that it must be set aside on the ground that no judge regardful of his duty to act judicially could have reached it'."

[36] We were also mindful of the views expressed by Phillips JA in **David Orlando Tapper (Trading as 'Fyah Side Jerk and Bar') v Heneka Watkis-Porter (Trading as '10 Fyah Side')** [2016] JMCA Civ 11, at para. [33]:

"[33] I am reminded by Viscount Simon LC in **Charles Osenton & Co v Johnston** [1941] 2 All ER 245 at page 250 that:

'...The appellate tribunal is not at liberty merely to substitute its own exercise of discretion for the discretion already exercised by the judge. In other words, appellate authorities ought not to reverse the order merely because they would themselves have exercised the original discretion, had it attached to them, in a different way. If, however, the appellate tribunal reaches the clear conclusion that there has been a wrongful exercise of discretion, in that no weight, or no sufficient weight, has been given to relevant considerations such as those urged before us by the appellant, then the reversal of the order on appeal may be justified...'

[37] In her reasons for judgment, the learned judge noted that the appellant had not challenged the amounts claimed to be outstanding. She also bore in mind that the appellant had made no proposal as to how those outstanding sums were going to be paid. The learned judge stated that she considered the following factors in her determination of the matters:

- i. the antiquity of the years outstanding for Property Tax (2010 to 2017);
- ii. the antiquity of the matter (the matter first came before the court on the 27 February 2017);
- iii. the Ministry of Finance's grant of relief to the appellant which reduced the outstanding amounts by approximately 50%;
- iv. there was no alternative proposal by Mr Tucker, the appellant's representative and general manager; and
- v. On 22 March 2021 the company was represented by counsel Mr David Ellis and there was no offer of a timely resolution to the matter.

[38] The learned judge also noted that at no point during the proceedings on 22 March 2021 did counsel, Mr Tucker or Mr Freeman inform the court that there was a further pending appeal to the Minister. We concluded that, even if the pending appeal had been brought to her attention, the learned judge was not obliged to either adjourn or stay the proceedings. The claims had been meandering before the court for approximately four years with no end in sight and there was no dispute that the moneys were owed. There was also no indication that efforts were being made to urge the Minister to render a decision.

[39] In the circumstances, we formed the view that it could not be said that the learned judge's decision to proceed with the matters and ultimately bring finality to the proceedings was "so aberrant that it must be set aside on the ground that no judge regardful of his duty to act judicially could have reached it". There was, therefore, no basis on which to disturb the learned judge's exercise of her discretion to proceed with matters.

[40] It is for these reasons that we concluded that grounds b and d were without merit.

Whether the learned judge erred when she imposed liability to pay the outstanding sums on the directors/executive members of the appellant? (grounds a and c).

Appellant's submissions

[41] Counsel submitted that section 52 of the Tax Collection Act did not permit the learned judge to make the consequential orders against the club's executive members. He stated that section 52(1) provides that a body corporate shall designate an officer as the responsible officer for the payment of taxes and it is that officer who has the obligation to ensure that its taxes are paid.

[42] He stated that at no time was the Parish Court advised that the members of the executive committee were designated as the appellant's responsible officers. It was submitted that whilst the respondent was unaware of any formal designation appointing Mr Nigel Davy as the responsible officer, he was the named person in both informations as being liable to pay the outstanding taxes. Reliance was placed on section 52(3) of the Tax Collection Act which provides that where no one has been designated as the responsible officer the managing director or the person who performs equivalent duties is deemed to be the designated officer. In light of that statutory provision, it was submitted that the learned judge needed to conduct an enquiry as to whether Mr Frank Jackson or any other person was the responsible officer at the time when the taxes became due. In the absence of such an enquiry, there was no foundation for the orders that were made.

[43] Counsel also directed the court's attention to section 52(7) of the Tax Collection Act which states that the responsible officer is not liable for the payment of taxes payable for any period prior to the date of his designation as such nor during the period when consequent on notification to the collector, he is not the responsible officer. The evidence was clear that Mr Jackson was not so appointed until 3 October 2018 and could not in

any event qualify as a responsible officer for the payment of taxes for the period 2010 to 2017.

[44] It was further submitted that the date of the appointment of each member of the executive committee was immaterial and that the relevant considerations were whether:

- i. The responsible officer was overruled or prevented by the members of the executive committee from paying the appellant's property taxes; and
- ii. The members of the executive committee had any bona fide reason for overruling and/or preventing the responsible officer from paying the appellant's property taxes.

[45] There was said to be no evidence before the learned judge to support her order making the members of the executive committee liable to imprisonment if the outstanding taxes were not paid by the appellant. It was submitted that the learned judge would have had to have read words into section 52 of the Tax Collection Act to support the orders made. Counsel submitted further, that it is trite law that a statute must be strictly construed to determine firstly, whether the provision imposes a tax obligation and, if so, whether the particular transaction or series of transactions under review create an obligation on the taxpayer for payment. Reliance was placed on the decision of **W T Ramsay Ltd v Inland Revenue Commissioners, Eilbeck (Inspector of Taxes) v Rawling** [1981] 1 ALL ER 865.

[46] On a literal and/or purposive interpretation of section 52 of the Tax Collection Act, it was submitted that parliament never intended to make the members of the executive committee liable to pay taxes without it being shown that such members took decisive action to prevent or overrule the responsible officer from paying the outstanding taxes. Counsel further submitted that the court ought to interpret section 52 of the Tax Collection Act in a similar manner as section 37A of the National Housing Trust Act was interpreted in **Robert Epstein v National Housing Trust and another** [2021] JMCA App 12.

Respondent's submissions

[47] Counsel submitted that pursuant to the Property Tax Act, taxes are payable annually by every person in possession of the property. Section 10(1) of the Act provides for an exemption for the buildings and lands belonging to any social, or cultural organization approved by the Minister and where they are used solely for the purposes of such an organization. It was pointed out that the appellant's application to the Minister to be categorized as a social organization was refused. She also stated that the Board had granted a 50% waiver on the rate of tax applicable on the unimproved value of both parcels of land to the appellant. Counsel stated that at the time the matters commenced before the Parish Court, there was no relief applicable to the two parcels of land.

[48] The court notes that there was a conflict between counsel's oral and written submissions pertaining to this issue. In her written submissions counsel posited that the order of the learned judge was correctly made against Mr Frank Jackson who was the president of the club. She stated that the order would only be incorrect if it was made against a person who is not the responsible officer. Therefore, the order in so far as it relates to the other named directors of the appellant was incorrect.

[49] It was further submitted that the intention of the legislature is to make the president/managing director of the club responsible for the payment of the property taxes. Reference was made to **Robert Epstein v The National Housing Trust** in support of that submission. Specific reference was made to para. [67] where McDonald-Bishop JA, in her analysis of section 37A of the National Housing Trust Act, stated:

"...having regard to the object of the legislation to ensure that where a body corporate is concerned, one of its officers must be responsible for the payment of the government's revenue. There is nothing in the application of the words in their ordinary and grammatical sense, given the policy that undergirds the NHT Act, that could lead to absurdity, injustice or unfairness."

Counsel submitted that the above statement is applicable to section 52(3) of the Tax Collection Act which is identical to section 37A of the National Housing Trust Act.

[50] It was also submitted that the Tax Collection Act and the Property Tax Act are to be read and applied together. Section 4 of the Property Tax Act provides that property taxes are to be paid by the person in possession of the property. Section 13 provides that a person in possession includes the owner, occupier, mortgagee in possession or other person in possession of such property. Pursuant to section 52(2) of the Tax Collection Act the appellant ought to have informed the respondent who was its responsible officer. This was never done and the then president of the appellant, Mr Davy was deemed to be the responsible officer. When Mr Jackson was appointed as the appellant's president, he assumed the liabilities of Mr Davy.

[51] Counsel, in her oral submissions, conceded that pursuant to section 52(7)(a) of the Tax Collection Act, the person liable for the outstanding taxes for the period 2010-2017 is Mr Davy and not Mr Jackson. This is because Mr Jackson became the president of the club after liability was imposed for the outstanding taxes.

Analysis

[52] The determination of whether the learned judge had the jurisdiction to (i) impose liability for the outstanding property taxes on the executive committee and (ii) subject the members of the executive committee to the possibility of imprisonment in the event of default, is answerable by an examination of section 52 of the Tax Collection Act which provides:

"52 (1) Where the person liable to pay taxes, rates or duties collectible pursuant to this Act or to do any acts, matters or things in relation thereto is a body corporate such body corporate shall designate an officer of the body corporate (hereinafter in this section referred to as 'the responsible officer') who shall be-

(a) answerable for doing all such acts, matters and things as aforesaid; and

(b) responsible for making payment to the Collector of Taxes of all such taxes, rates or duties collectible as aforesaid.

(2) The body corporate shall give written notice to the Collector of Taxes of any designation made pursuant to subsection (1) and shall also notify the Collector of any change in that designation.

(3) In the absence of any designation pursuant to subsection (1), the person who is the managing director of the body corporate or, as the case may be, the person who (by whatever name called) performs in Jamaica the duties normally carried out by a managing director or, if there is no such person, the person in Jamaica appearing to the Collector of Taxes to be primarily in charge of the body corporate's affairs shall for the purposes of this section be deemed to be the responsible officer.

(4) A responsible officer who fails or neglects to carry out his duties in accordance with this section shall be jointly and severally liable together with the body corporate for all taxes, rates and duties and penalties in relation thereto unless he satisfies the Collector that-

(a) there were *bona fide* reasons for the failure or neglect and that payment could not have been made in the circumstances; or

(b) he was overruled by the board of directors (herein-after referred to as the board) or was otherwise prevented by the board or any director thereof from carrying out his duties under this section.

(5) If the Collector is not satisfied as to the matters referred to in subsection (4) he shall inform the responsible officer of his decision in writing.

(6) Where the responsible officer satisfies the Collector pursuant to subsection (4) that he was overruled or prevented as mentioned in that subsection, each director shall be jointly and severally

liable (together with the body corporate) for the taxes, rates and duties and any penalties in relation thereto unless, he proves that-

(a) there were *bona fide* reasons for overruling the responsible officer or preventing payment and that payment could not have been made in the circumstances; or

(b) he was neither a party to the decision of the board to overrule the responsible officer nor a party to any action by the board or any other director to prevent payment.

(7) A person who is designated a responsible officer shall not be liable in respect of any taxes, rates or duties which were due and payable-

(a) prior to the date of his designation; or

(b) during any period when, consequent on notification to the Collector, he is not the responsible officer.

(8) In this section-

'body corporate' means-

(a) a statutory body or authority; and

(b) a company;

'company' means a company incorporated or registered under the Companies Act." (Emphasis supplied)

[53] The approach of the courts in matters of statutory interpretation is to determine the natural and ordinary meaning of the words used. In **Special Sergeant Steven Watson v The Attorney General and others** [2013] JMCA Civ 6, Brooks JA (as he then was), at para. [19], cited with approval Lord Reid's statement on this issue, in **Pinner v Everett** [1969] 3 All ER 257 at 258I, where he stated thus:

"[19] 'In determining the meaning of any word or phrase in a statute the first question to ask always is what is the natural or ordinary meaning of that word or phrase in its context in

the statute? It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature, that it is proper to look for some other possible meaning of the word or phrase. We have been warned again and again that **it is wrong and dangerous to proceed by substituting some other words for the words of the statute’.**” (Emphasis as in the original)

[54] This statement of the applicable principles was reiterated by Brooks JA in the more recent decision of **Jamaica Public Service Company Limited v Dennis Meadows and others** [2015] JMCA Civ 1, where at para. [54], the court quoted page 49 of Cross Statutory Interpretation, 3rd edition, in which the authors summarized the major principles of statutory interpretation as follows:

“[54] The learned editors of Cross’ Statutory Interpretation 3rd edition proffered a summary of the rules of statutory interpretation. They stressed the use of the natural or ordinary meaning of words and cautioned against ‘judicial legislation’ by reading words into statutes. At page 49 of their work, they set out their summary thus:

- ‘1. The judge must give effect to the grammatical and ordinary or, where appropriate, the technical meaning of words in the general context of the statute; he must also determine the extent of general words with reference to that context.
2. If the judge considers that the application of the words in their grammatical and ordinary sense would produce a result which is contrary to the purpose of the statute, he may apply them in any secondary meaning which they are capable of bearing.
3. The judge may read in words which he considers to be necessarily implied by words which are already in the statute; and he has a limited power to add to, alter or ignore statutory words in order to prevent a provision from being unintelligible, absurd or totally unreasonable, unworkable, or totally irreconcilable with the rest of the statute....”

[55] Brooks JA stated that the above “summary is an accurate reflection of the major principles governing statutory interpretation” (see also McDonald-Bishop JA in **Robert Epstein v National Housing Trust and another**, who also applied that principle).

[56] The position is the same for the interpretation of revenue statutes as was articulated by this court in **Cigarette Company of Jamaica Ltd (In Voluntary Liquidation) v Commissioner of Taxpayer Audit and Assessment** [2010] JMCA Civ 3. At paras. [52] and [53] the court said:

“[52] Both parties rely on the line of House of Lords authorities which started with **W.T.Ramsay Ltd v IRC** (supra), was considered further in **IRC v McGukian** [1987] 3 ALL ER 817 and culminated in **Barclay’s Mercantile Business Finance Ltd v Mawson (Inspector of Taxes)**, (supra). These cases all emphasise that, in interpreting revenue statutes, the paramount question ‘always is one of interpretation of the particular statutory provision and its application to the facts of the case’ (per Lord Nicholls in **MacNiven (Inspector of Taxes) Westmoreland Investments Ltd** [2001] 1 ALL ER 865,869. This is in fact no different from the correct approach to the interpretation of statutes generally.

[53] The significance of **Ramsay** was therefore that it assimilated the rules of construction of revenue statutes with the rules of interpretation of statutes generally...”

[57] Upon an examination of section 52 of the Tax Collection Act, it is clear that liability may only be imposed (i) on a responsible officer; and (ii) on a director of a body corporate in particular circumstances. A responsible officer is not liable for taxes, rates or duties that were due and payable for any period that he was not designated as the responsible officer.

[58] A responsible officer who fails or neglects to ensure the payment of property taxes will be jointly and severally liable along with the corporate entity unless special circumstances exist as provided by 52(4)(a) and (b). In order to be absolved of liability the responsible officer must prove to the Collector of Taxes that there were bona fide

reasons for the non-payment or that he was overruled by the board of directors or any director from carrying out his duties.

[59] If the Collector of Taxes is satisfied with the responsible officer's explanation, each director shall be jointly and severally liable unless he can prove that there were bona fide reasons for overruling the responsible officer or that he was not a party to the action of the board or any other director to do so.

[60] The court, in our view, would also be required to conduct a similar exercise in order to determine who should be liable in the event that the appellant failed to pay the judgment debt. There is no indication on the record that that was done. In the absence of such a fact-finding exercise, there was no basis on which the learned judge could have made the orders which she did imposing liability on the directors.

[61] In addition, Mr Frank Jackson was not the responsible officer for the period 2010-2017. He was therefore exempt from liability by virtue of section 52(7)(a). During that period, the responsible officer was Mr Nigel Davy. Mr Jackson's assumption of the role of the new responsible officer did not extinguish Mr Davy's liability.

[62] It was based on the circumstances above that we concluded that the learned judge erred when she made the orders against the appellant's directors/executive committee. We therefore made the orders at para. [1] of this judgment.