THE JAMAICA LAW REPORTS

VOLUME 18

THE JAMAICAN BAR ASSOCIATION
in association with
THE CARIBBEAN LAW PUBLISHING COMPANY LIMITED
under the auspices of the USAID/Jamaican Bar Association
Sustainable Justice Reform Project

KINGSTON

1996

Resident Magistrate's Court must envisage and involve the right of the Board to make use of the services of the statutory officer, namely, the Valuation Officer, provided for by s. 9 (8) of the Act.

(iii) The powers given to the Chairman of the Board by s.11 (5) of the Act to compel the attendance and examination of witnesses and the production of documents were not confined to the powers of a Resident Magistrate in a civil action but refer to his powers generally and as a Resident Magistrate has the power in criminal cases to summon and examine witnesses as witnesses of the Court, similarly the Chairman of the Board is given the power to summon and examine anybody that the Board wishes to call as a witness of the Board.

Appeal dismissed with no order as to costs.

No case referred to.

A. F. Rae for the appellant.

ROBINSON, P.: The sole point raised in this appeal is the contention that the Rent Board has no power, no jurisdiction or right to call any witnesses at all. Consequently, the Board erred in calling as a witness of the Board the Valuation Officer in this case, and in taking into consideration the evidence which that officer gave. In our opinion there is no merit in the contention.

The Rent Restriction Act expressly provides by Section 11, sub-section 10 that -

> "When an application has been made to a Board under this Act, the Board may make an order on such application notwithstanding the non-attendance of the applicant or any person interested before the Board."

It would seem to us that if the Board is to have the power to make an order, notwithstanding the non-attendance of any interested party before the Board, it must follow that the Board must have the power to call such evidence as it may wish to enable it to make that order.

The practice used to be for the Board to employ the services of some private valuator to come and give that evidence to enable the Board to determine the standard rent. In 1976, the Act was amended to provide for an officer called a Valuation Officer who became an employee and an officer of the Board. Section 14 of the Act provides that such an officer

> "(a) at any reasonable time may enter any controlled premises and carry out such investigations in relation to the value of those premises as he thinks necessary for the purpose of giving evidence before a Board;" and
>
> "(b) 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."

It would seem to us, therefore, to be quite clear that if the Board has power to determine the standard rent, whether or not parties appear, it must have the power to hear relevant evidence, and the Valuation Officer has the power to give such evidence before the Board.

Attention was directed to Rule 11 of the Rent Restriction Rules, 1944, which provides as follows:

> "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."

Suffice it to say, that that Rule begins by expressly stating that it is subject to the provisions of this Law. This Law includes the section to which I have already referred, and while it talks about the practice and procedure, it goes on to say, "with the necessary modifications."

It follows that because of the power of the Board as given in the Act, . . . the "necessary modifications" must envisage and involve the right for the Board to make use of the services of the statutory officer, namely, the Valuation Officer, provided for by Section 9 (8) of the Act, and whose functions are as set out in Section 14.

It is interesting to observe that sub-section 5 of Section 11 of the Act gives the Chairman of the Rent Board "the powers of a Resident Magistrate, to compel the attendance and examination of witnesses and the production of documents." Those powers are not confined to the powers of a Resident Magistrate in a civil action but refer to his powers generally and a Resident Magistrate has the power in criminal cases to summon and examine witnesses as witnesses of the Court. Similarly, the Chairman of the Rent Board is given the power to summon and examine anybody that the Board wishes to call as a witness of the Board and, as already indicated Section 14 requires the Valuation Officer to give before the Board evidence which may assist the Board in determining the standard rent.

For all the above reasons, this appeal is dismissed. There shall be no order as to costs.

DONHEAD COURT LTD. *v.* RENT ASSESSMENT BOARD FOR THE CORPORATE AREA

[COURT OF APPEAL (Robinson, Leacroft, P., Kerr, Rowe, JJ.A.) January 21 and 30, 1981]

Landlord and Tenant—Assessment of rent—Distinction between rent and cost of maintenance under Rent Restriction Act—Jurisdiction of the Rent Assessment Board—Rent Control—Rent Restriction Act, ss. 18, 19, 24.

The appellant is the landlord of premises let and situated in Kingston.

Upon an application by a tenant to have the standard rent in respect of the apartment determined, an assessor was appointed to value the premises and he gave evidence at the proceedings before the Rent Assessment Board. However, there was disagreement as to the true standard rent for the apartment. The appellant (landlord) maintained that the rental for each apartment included some stated costs of maintenance, to which the tenant objected on the gound that such costs of maintenance had not hitherto been disclosed to the tenant. The notice commencing the matter before the Board did not include a claim for costs of maintenance of the premises. The Board nevertheless proceeded to make awards both on the standard rent and also the costs of maintenance.

On appeal to the Court of appeal -

Held: (i) Under the Rent Restriction Act, the tenant is entitled under s. 18 (3) to apply to the Rent Assessment Board to have the standard rent of the premises being occupied by him as tenant thereof assessed while the landlord has a concurrent right under s. 18 (4) thereof;

(ii) although under s. 19 of the Act the percentage calculation of the standard rent is fixed, if the landlord makes a proper application for assessment of costs of maintenance additionally under s. 24 (3) of the Act, the Rent Assessment Board is empowered to make awards both on the standard rent and on the amount of costs of maintenance considered reasonable in the circumstances of the particular case;

(iii) in the absence of an application under s. 24 (3) of the Act, the Rent Assessment Board will have no jurisdiction to make awards as to costs of maintenance. In the instant case therefore, the Rent Assessment Board acted in excess of its jurisdiction when it made the award as to costs of maintenance in the absence of an application under s. 24 (3) by the landlord;

(iv) in the absence of an agreement to the contrary, s. 24 (4) protects the tenant from a landlord who wishes reimbursement for costs of maintenance services of the premises by placing on such landlord the duty to produce to the tenant any bills received in respect of the services being claimed.

Appeal allowed. Award for costs of maintenance services set aside.

No case referred to.

H.A. Fraser for the appellant.

ROWE, J.A.: Donhead Court situated at 10 Donhead Avenue, Kingston 6, in the parish of St. Andrew is comprised of two apartment buildings containing 2 studio apartments and 12 one bedroom apartments. These 14 apartments were let to separate tenants. Proceedings were instituted by Mr. Edmond Gordon one of the tenants, on October 3, 1979 before the Rent Assessment Board for the Corporate Area, to have the standard rent of his apartment determined. On October 23, 1979 the Secretary of the Rent Assessment Board by notice required the landlord to apply under Section 18 (4) of the Rent Restriction Act (Hereunder called the Act) to have the premises assessed. The records to not disclose whether the landlord complied with the request.

The application proceeded in a normal way. Mr. Stanley Cook, a realtor visited the premises on two occasions and on the hearing of the application gave evidence as to his valuation of the *land* at $62,643.00 of the two *buildings* at $87,329.00 and $15,356.00 respectively and of the furnishings of each apartment according to its own appointments. Landlord and tenants were eminently satisfied with each and every assessment of Mr. Cook as to the valuation of the land, the valuation of the buildings and the valuation of the furniture. One would have thought that with this happy coincidence of circumstances there could be no room for dissent as to the true standard rent for each of those apartments. But this application had its own inherent problem.

It was the landlord's evidence that the rental for each apartment included an element for maintenance. What that maintenance element represented in money was never disclosed to any tenant at the time when he entered upon the tenancy nor was this done subsequently. Whatever calculations the landlord made to arrive at his maintenance figure, whatever he wished to provide and to place to the account of the tenant, he kept that information locked in his breast. It was little wonder then that at the hearing of the application for the fixing of the standard rent when the landlord began to expand upon the multiplicity of costly services that he provided, that he met strong resistance from the complaining tenant. There was a dispute between these parties as to who provided garbage collection services, the K.S.A.C. or a private contractor; as to whether the gardener was a $50.00 per week full time employee equipped with lawn-mower, wheel-barrow, ladders and brooms or only a once a month machete chopping man. All these questions as to *maintenance services* as the Board resolved and made an assessment as to the value of the services.

Enough has been said to indicate that an unreal situation can be created when a landlord fixes upon a single sum for the rental of premises which sum is inclusive of a maintenance element without disclosing to the tenant the amount for such maintenance. Such a practice places the tenant unnecessarily at the mercy of the landlord as no one but the landlord can in those circumstances determine whether the sums being demanded for maintenance

services are reasonable. This unreality is compounded *when there is no written or oral agreement*, as in this case, between landlord and tenant *as to what services the landlord will provide for* which the tenant must bear the whole cost. A landlord should find no shelter in this rolled up procedure. On his application to the Board under Section 18 (4) of the Act, the landlord should be obliged to disclose what amount of the rental is being allocated to maintenance services.

In the instant case the application which was before the Board was founded under Section 18 (3) of the Act in respect of the tenant's application and Section 18 (4) in respect of the request to the landlord to make an application. The principles on which the Board can assess the standard rent are those set out in Section 19 of the Act. Parliament has given fixed percentages for the calculation of the standard rent and it may be reasonable to expect that a prudent and business-like landlord may be expected to service his capital investment, keep the premises in tenantable repair and even make a modest profit out of the proceeds of this standard rent.

There are, however, some exceptional circumstances where a landlord is permitted under the Act to demand of a tenant a sum in excess of the standard rent fixed in accordance with Section 19. Such are the circumstances provided for in Section 24 (3) of the Act:

> "Nothing in subsection (1) shall prevent a landlord from requiring from a tenant reimbursement of any sum paid by the landlord for water, electricity, gas, attendance or any other service supplied to the tenant on premises let to him by the landlord, being sums in respect of such service aforesaid known or reasonably estimated by the landlord to have been used or enjoyed by the tenant."

This provision is only fair. A landlord is not required to maintain his tenant or to subsidize his tenant's household expenses. But equally a landlord is not permitted to make a secret profit or to enrich himself out of his tenant by inflating charges for services or charging for unnecessary services or unperformed services. Section 24 (4) protects the tenant from these or similar landlord excesses by providing that a landlord who wishes reimbursement for services under Section 24 (3) shall produce to the tenant any bills he has received for the services he claims to have supplied. If there is agreement between the landlord and tenant as to the level of reimbursement, that is an end of the matter. If a dispute arises, then either landlord or tenant may make an application to the appropriate Rent Board to have the question settled—see Section 24 (4) of the Act.

The procedure under the Act for the determination of the amount which a landlord can claim for reimbursement for services rendered to a tenant is tolerably clear. Firstly, it is unrelated to the procedure for the fixing of the standard rent which depends so much upon the intrinsic value of the land, buildings and furniture, if any, supplied by the landlord and to the formula to be applied thereto as fixed by Parliament. Secondly, it is open to the parties to agree as to the sum to be paid for the services supplied and as to this there should be no element of profit for the landlord. Thirdly, it is only when the landlord and tenant have a dispute as to the amount of reimbursement to which the landlord is entitled that that specific question can be submitted to and determined by the Board.

In the instant case the landlord had no notice that the tenant would seek to question his charges for reimbursement. The notice sent to the landlord by the Rent board on October 23, 1979 specifically referred to Section 18 (4) of the Act and made no mention of Section 24 (4) of the said Act. We readily understand that the Board was anxious to deal with all the questions which arose on the evidence especially having regard to the unorthodox manner in which the landlord calculated his rent for each apartment, but *we have no hesitation in deciding that the Board had no jurisdiction to determine the question of reimbursement for services on the instant application.*

It was for these reasons that we allowed the appeal and granted the appellant's prayer that the Board's Order be varied. We quashed that portion of the Board's decision which purported to make an award for services in the sum of $32.00 per month in respect of each of the 14 apartments.

We are not unmindful of the fact that by virtue of our decision in this appeal, further proceedings in respect of these premises may come before the Board but we wish to stress that if the proper procedure is adhered to at all times that that is the surest way to avoid delays and expense and eventually lead to the advancement of the course of justice.

R. *v.* RESIDENT MAGISTRATE FOR ST. ANDREW, EX PARTE ERVIN WALKER

[SUPREME COURT (Full Court—Parnell, Ross and Bingham, JJ.) February 16, 1981]

Judicial Review—Mandamus- Resident Magistrate—No order made on information for trial and indictment—discretion of Resident Magistrate—Power of Court to make an order of mandamus to compel trial—review of exercise of discretion.

The appellant was arrested and charged for the offence of larceny. He was brought before the Resident Magistrate's Court for trial. At the request of the complainant no order was made on the information for a trial of the appellant on indictment. An application for leave to apply for an order of mandamus to compel the Resident Magistrate to order a trial on indictment and conduct a trial on indictment was refused by Malcolm, J. On appeal,

Held: The Resident Magistrate has a discretion as to whether a trial should be ordered. In the circumstances, the discretion was properly exercised and the Court therefore, had no power to review the Resident Magistrate's exercise of his discretion nor to made an order of mandamus.

Appeal Dismissed.

No case referred to.

An appeal from Order of Malcolm, J. refusing leave for an Order of Mandamus dismissed.

H. Haughton-Gayle for the applicant.

No appearance for the respondent.

PARNELL, J.: This is an appeal from an order made on the 2nd December, 1980 by Mr. Justice Malcolm, whereby he refused leave to the applicant, Ervin Walker, to apply for an Order of Mandamus directed to one of the Resident Magistrates for St. Andrew requiring that an order be made whereby he be tried on an indictment, touching information number 840879 in the said Resident Magistrate's Court of St. Andrew.

The facts are simple in outline. On the 13th day of October last year, one Ervin Walker is alleged to have committed the offence of larceny of nine pairs of socks valued at thirty three ($33.00) the property of the Hosiery Company of Jamaica Limited. He was arrested by the Police on the 18th day of that month. He was taken before the Resident Magistrate's Court of St. Andrew and he appeared on about two or three occasions.

His affidavit which is dated the 18th day of November, last year, paragraph 9, states thus:

> "That I also attended, on the 10th day of June, 1980, as ordered but my Attorney-at-Law was absent, as he later on informed me, unavoidably. The presiding Resident Magistrate, Her Honour Leonie Vanderpump, told me that she had made 'no order' at the request of the complainant and that she had endorsed the records accordingly."

This is the order which was made on the 10th of June, last year, which is shown at the back of the information. It reads thus:

> "No order—made at the request of the complainant."
> Signed, L.E. Vanderpump, Resident Magistrate, St. Andrew.

This is the order which the Applicant seeks to have set aside. He in effect, seeks an Order of Mandamus to compel her to try the information by ordering a trial on indictment followed by a hearing on the merits.

Now, when one turns to the relevant sections of the Judicature (Resident Magistrates) Act one finds two sections, 272 and 273, which deal with the procedure which is to be followed when a person appears before the Resident Magistrate, charged with an indictable offence.

> "On a person being brought or appearing before a Magistrate in Court or in Chambers, charged on information and complaint with any indictable offence, the Magistrate shall, after such enquiry as may seem to him necessary in order to ascertain whether the offence charged is within his jurisdiction, and can be adequately punished by him under his powers, make an order, which shall be endorsed on the information and signed by the Magistrate, that the accused person shall be tried, on a day to be named in the order, in the Court or that a preliminary investigation shall be held with a view to a committal to the Circuit Court."

This is what section 273 states:

> "It shall be lawful for any magistrate, in making any order under Section 272, directing that any accused person be tried in the Court by such order to direct the presentation of an indictment for any offence disclosed in the information, or for any other offence or offences with which, as the result of an enquiry under the said section, it shall appear to the Magistrate the accused person ought to be charged and may also direct the addition of a count or counts to such indictment. And, upon any such enquiry, it shall be lawful for the Magistrate to order the accused person to be tried for the offence stated in the information, or for any other offence or offences, although not specified in the information, and whether any such information in either case did or did not strictly disclose any offence."

What that section means is this—and that is what generally happens in practice—that the Resident Magistrate has the power, first of all, to ask whoever is prosecuting—whether it is the Clerk of Courts or Counsel from the Director of Public Prosection's Office or a private prosecutor, to outline the facts on which he is going to reply. The Magistrate, having heard the facts, will then make an order and state what offence or offences should be included in the indictment. This must mean that in considering the question as to whether or not an order should be made, the Magistrate can properly take into account the wishes or the views of the complainant in the case. It may be a border-line case. It may be a case in which justice would be better served if, instead of proceeding with the indictment, the complainant be allowed to bring a civil action. One can have several reasons why a "no order" may be made.