IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE FULL COURT

SUIT NO M 38 OF 1987

IN THE MATTER of Donald Glanville

A N D

IN THE MATTER of the Rent Assessment Board

A N D

The Rent Restriction Act.

APPLICATION FOR ORDERS OF CERTIORARI AND PROHIBITION

Coram: Bingham J, Ellis J, and Langrin J.

Michael Vaccianna for the Applicant.

Douglas Leys and Judith Brown of the Attorney General's office instructed by the Director of State Proceedings for the Rent Assessment Board for the Corporate Area.

Gave Nelson watching proceedings for the tenant in the previous proceedings before the Rent Assessment Board for the Corporate Area.

Heard: May 2, 1988

Bingham J.

On May 2, 1988 after hearing arguments in respect of applications for the Orders of Certiorari and Prohibition respectively, we granted both applications, quashed the orders made by the Rent Assessment Board for the corporate area (hereinafter referred to as "The Board") in this matter, whereby the Board ordered that the sum of $4,022.50 paid to the applicant by one Dorrel Stewart (hereinafter referred to as "the tenant") as being in payment of rental in respect to premises 6 Cymanthia Avenue, in the parish of Saint Andrew be refunded to the tenant by the said applicant as being excess rental.

The granting of the application for the order of the Prohibition was in order to prohibit any subsequent proceedings continuing by way of execution in the Resident Magistrate Court for the parish of Saint Andrew by virtue of the Statutory jurisdiction given to that Court by Section 36 (4) of the Rent

Restriction Act.

It was brought to our attention by virtue of paragraphs 8 and 9 of the Affidavit of Mrs. Avis Pamela Whittingham, a partner in the firm of Vaccianna and Whittingham, the attorneys who represent the applicant that although leave to apply for the orders had been sought by the applicant in this Court under Section 564 (b) of the Civil Procedure Code Act, and granted by Langrin J (ag.) on 2nd June, 1987 and which order included a direction that all proceedings be stayed until the determination of the application for the orders of Certiorari and Prohibition, it was brought to our notice at the hearing of this matter that the order made by Langrin J. when brought to the notice of Mr. Roy Stewart, a Resident Magistrate assigned to the Resident Magistrate Court for Saint Andrew, that it was ignored by the Learned Resident Magistrate on the grounds that "the order did not make specific reference to the Plaints which were before him and therefore the order did not apply to those proceedings."

The application for a stay of the proceedings was then refused by the Resident Magistrate. As such a course of conduct by the Magistrate is cause for some strong comment from this Court, nothing will be said at this stage but will be conveniently left for a later stage when the substantive matters which engaged our attention have been considered and determined.

The facts surrounding the matter are not in the main in dispute. For a recital of them it may be convenient to refer to the Affidavit of the applicant filed in support of the application for the Order of Certiorari.

What emerged from this Affidavit is that the applicant is a Realtor by profession and the Managing Director of Realtors (International) Limited which company acted as agent for one Donald Gordon who is the owner of the premises, 6 Cymanthia Avenue, Kingston 10 from the period November 1976 to July 1986. The tenant Dorrel Stewart was in occupation of these premises from

October 1978 to June 1986.

Subsequent to the termination of the tenancy, and more particularly on or about 10th November, 1986 some seven separate notices of a claim for excess rental being intended no doubt as monthly claims and covering the entire period of the tenancy came to the notice of the applicant. These notices were stated to be for a refund of rental paid in excess of the permitted rental. They referred to a date for a hearing of the matter on 6th October, 1986.

The applicant contacted the Rent Board and was informed that the matter was not heard on 6th October, but that a new date was being fixed and that he would be advised of this date.

The applicant received no further notifications as to the new hearing date, and eventually on 12th January, 1987 he was served with certain documents purporting to be issued by the Board indicating that orders had been made against him on 2nd December, 1986, in respect of the said applications.

In so far as the hearing date on 2nd December, 1986 and the circumstances under which the Board acted in making the said orders, it may be convenient to refer to the Affidavit of Carmen Paharasingh who is employed to the Board as a Secretary and who in her Affidavit sworn to on 20th November, 1987 and at paragraph 5 and 6 depened:-

> "5. That I am informed and do verily believe that on October 6, 1986 the applicant called and was advised of the new hearing date of the 11th November, 1986. That at the hearing on 11th November, 1986 only the tenant appeared whereupon the said sitting was adjourned and a new date set for 2nd December, 1986.
>
> 6. That on 12th November, 1986, a notice of hearing for the 2nd December, 1986 was communicated to the applicant by letter dated 12th November, 1986 that exhibited hereto and marked Exhibit "CP 3" as (sic) a copy of the said letter."

It is obvious that the word "as" in the last sentence is an error and the proper word was meant to be "is".

"CP 2 and CP 3" referred to above both make very interesting reading. They read as follows:-

"

C.P. 2

Rent Assessment Board
62 Duke Street
Kingston

Telephone 22316-7

27th October, 1986

Mr.

Dear

Re Arrears 6 Cymanthia Avenue

Kindly attend a hearing at the above address on the 11th November, 1986 at 10:00 a.m.

Yours truly,

I. Palmer
for Secretary

cc. to D. Granville (L/L)
Realtors Int'l Ltd.
D. Stewart (Tenant)"

C.P. 3

Rent Assessment Board
62 Duke Street
Kingston

Telephone 22316-7

12th November, 1986

Dear

Re Arrears 6 Cymanthia Avenue (20)

Kindly attend a hearing at the above address on the 2nd December, 1986 at 10:00 a.m.

Yours truly,

I. Palmer
Secretary"

It is of some significance that in so far as both these letters were intended to have been "a notice of hearing communicated to the applicant" they could not be considered in

any such light as it is clear from any examination of the letters that:-

1. They were not directed to the applicant.
2. Although the letter of 27th October, 1986 mentioned that a copy was sent to Dr. Granville (L/L) Realtors International Limited, the applicant's correct name is Donald Granville and in that regard that notice could not be regarded as referring to him.
3. The letter dated 12th November, 1986 purporting to be a notice of hearing on 2nd December, 1986 was not copied to anyone neither was it directed to a named person and even if it was intended to be for the applicant it cannot be, assumed to have been directed to him.

The Arguments

For the applicant it was submitted that:-

1. The original notice of claim served on the applicant in accordance with Rule 3 (1) of the Rent Restriction Rules 1984 was bad as the rule required that the notice shall be served not less than 15 days before the date fixed for the hearing of the application.
2. Although it was conceded that Rule 3 (2) which sets out the manner in which service is to be affected is directory and therefore, in order to be effective would only have to be substantially complied with, Rule 3 (1) in so far as it affects the question of the time fixed for service of the notice of the claim is mandatory as to its terms.
3. If the construction to be placed upon Section 3 (1) as being mandatory is correct, then it followed that any subsequent notice of hearing by whatever means could not cure the irregularity brought about by a failure to serve the notice of claim within the

permitted period.

4. As compliance by the applicant with Rule 4 would therefore, be rendered impossible because of this irregularity, the matter could only be cured by fresh proceedings being commenced de novo.

For the Respondents it was submitted that:-

1. In so far as Rule 3 of the Rent Restriction Rules 1984 is to be construed, the rule is directory only and in this regard there has only to be substantial compliance.
2. As the applicant was at all material times made aware of the hearing dates on 6th October, 1986, 11th November, 1986 and on 2nd December, 1986 on which last mentioned date the matter was disposed of, he cannot claim to have been prejudiced by the orders made as a result of the hearing on 2nd December, 1986.
3. The applicant's failure to be given a hearing due to his own conduct and the order of the Rent Board should therefore be allowed to stand.

The Law

The Rent Restriction Rules 1984 were prescribed in accordance with Section 11 (11) of the Rent Restriction Act. Rule 3 which is the relevant rule under which the claim is made by the tenant upon the applicant in this matter for a refund of 'excess rental' set out the procedure that is to be followed in making such applications.

If the applicant when served with the notice of such a claim wished to defend the matter he had to meet certain requirements laid under Rule 4 within eight days of the service of the notice of the claim upon him. If these requirements were not fulfilled within the allotted time the respondent (the tenant in this case) would then be notified by the Board that the applicant

has not given notice of an intention to defend the claim.

The matter before us for our determination revolved around what is the proper construction to be placed upon Rule 3 (1) in so far as it states that:-

> "3(1) Where, pursuant to Rule 2, an application is filed by a landlord or tenant (hereinafter referred to as the applicant) the Secretary of the Board shall, not less than fifteen days before the date of the hearing of the application, cause to be served on the tenant or landlord against whom the order is sought (hereinafter referred to as the respondent) a notice of claim in the form set out as Form 3 in the Schedule."

It is clear from the facts as set out in the Affidavits referred to, as well as the arguments advanced from both sides that there are two main questions which fall for our consideration namely:-

1. If it was established that the applicant was deprived of an opportunity to a hearing on 23rd December, 1986, by virtue of what he is contending and an examination of the documents reveal, as the Board is required to act fairly it would follow that the audi aulteram partem principle would then apply and this would serve to nullify the proceedings which took place on 2nd December, 1986 when the order was made against the applicant by the Board.

2. On the other hand, by virtue of paragraphs 5 and 6 of Mrs. Paharasingh's Affidavit it would appear that the adjourned hearing dates were all brought to the notice of the applicant and in that regard, if he was deprived of an opportunity to be heard, then this would have been due to his own conduct in disregarding the notices sent to his office by letter. In this regard Rule 3 (2) of the Rent Restriction Rules has to be interpreted in the light of the fact that in so far as the mode of service of notice of a claim is concerned there is no requirements for the notice to be served personally upon the applicant. It would appear that provided the notice was brought to the attention of the applicant then it would not seem to matter

by what means this came about.

The crucial question, however, and the one which the application for the Order of Certiorari turned on was the construction to be placed upon Rule 3 (1) of the Rent Restriction Rules 1984. The particular clause has already been set out and there is no need therefore to recite it at this stage. The crucial question for us to determine is whether the particular clause admits of a directory or mandatory interpretation.

It is a cardinal rule of construction of statutes that where a specified period is fixed by the legislature for the doing of a particular act, then this must be strictly followed.

It is also a principle of construction of general application that procedural requirements as laid down in statutes admit of a strict interpretation unless there are clear words which seek to alter or vary such an interpretation.

Moreover, also of general application is the rule that statutes which seeks take away the rights of individuals or to fix obligations upon them are to be construed strictly.

When all these canons of construction are applied to Rule 3 of the Rent Restriction Rules it is clear that one need look no further than the first stated rule of construction which would require that the Board shall effect service of the notice of the claim within the permitted period i.e. "not less than fifteen days before the date of hearing of the application, cause to be served on the applicant etc." (Underlines mine for emphasis).

We are of the view that this clearly mandates the Board to effect service in the manner as laid down by the rule. As it is common ground that the notices of claim were 'short served' in the light of the admitted facts, it follows that these notices were ineffectual and could only be cured by commencement of the tenants application de novo.

It is of further significance that the nature of proceedings before the Board in respect of such applications are

intended by the Legislature to follow closely the like proceedings in a Resident Magistrate's Court in a civil action for the recovery of a debt or liquidated damages. (See Rules 4, 5, 6, and 7 of the relevant rules as well as Section 146 of the Judicature Resident Magistrate Act). A condition precedent to a default order, which was the form of the orders made by the Board, is that there must be proper proof of service in compliance with the rules and such a requirement has to be strictly followed.

The period of fifteen days referred to in Clause 3 (1) of the Rules would have to be computed therefore, without having any regard to the hearing date, 6th October, 1986. Proper service, being a precondition for the making of a valid order by the Board, non compliance therefore, went to the question of a want of jurisdiction on the part of the Board to make the orders which were in fact made. As the service of the notice of claim was bad, then it followed that no valid order could result from this and the submission of Learned Counsel for the applicant that the matter could only be cured by proceedings de novo is sound.

It is for these reasons that we quashed the orders made by the said Board and granted the reliefs sought with costs to the applicant to be agreed or taxed.

We would at this stage wish to advert to the conduct of the Resident Magistrate in respect to his refusal to comply with the order granted by a single Judge staying proceedings until the application for an Order of Certiorari was heard and determined. His conduct which can only describe as being arrogant in nature has resulted in an unnecessary application for an Order for Prohibition being sought and obtained and costs awarded against the Government. We would venture to suggest that if and when similar applications are made before Resident Magistrates in the future that they ought to ponder well the possible

consequences of actions such as that displaved by the Resident Magistrate in this matter as well as the adverse effect that their conduct may have on the administrations of justice as well as the overall welfare of the country as a whole.

Ellis J:

I agree.

Langrin J:

I agree.