

Rock Investments Ltd. (the respondent) in respect of claims CL 2001/I-015 and HCV/2033 of 2004. In the former claim, Issar Jewellers Ltd. (t/a Jewellerama) (the appellant) had sought among other things "a declaration that the purported Certificate of Exemption dated September 11, 1985, relating to the entire Mall Plaza, to include the defendant's said property is invalid, void and of no effect". Claim HCV 2033 of 2004 is a consequential claim by the respondent for the recovery of rent from the appellant. It is of no moment for the purposes of this appeal. In paragraphs 3 and 5 of its defence to the earlier claim, the respondent asserted as follows:

- " 3. Save that the Defendant admits that its property known as the Mall Plaza is a "public or commercial building" within the meaning of the **Rent Restriction Act**, paragraph 3 of the Statement of Claim is denied. The Defendant says that its property known as "Mall Plaza", being all the land known as 20 Constant Spring Road situated in the parish of Saint Andrew, Certificate of title for which is registered at Volume 939 Folio 243, is exempt from the provisions of the Rent Restriction Act."
- "5. In answer to paragraph 5 of the Statement of Claim, the Defendant denies that the said Certificate is invalid or void or of no effect as alleged. The Defendant contends that the said Certificate is not rendered invalid by reason of it exempting the entire plaza of which Shop 11C is a part, and further says that the Certificate in fact certifies the valuation of the rental value at the prescribed date. Further, the Defendant contends that in as much as the certificate in fact certifies the rental value at the prescribed date, the omission to state the prescribed date on the Certificate would not invalidate the certificate, as there is no requirement under the **Rent Restriction Act**

or any regulation or Ministerial Order made thereunder that the Certificate of Exemption must state the prescribed date.”

2. The parties had agreed for Brooks, J. to rule on the validity of the certificate of exemption as a preliminary issue, instead of embarking on a trial of the consolidated claims. According to the learned judge, the parties “contemplated that a decision in favour of validity in respect of the shop in question may result in an order for summary judgment”. The relevant issues for consideration were framed thus in an application for court orders:

“The applicant Issar Jewellers limited (t/a Jewellerama) of shop 11C Mall Plaza ... seeks the following Orders:-

1. A Declaration that Shop 11C, Mall Plaza... (“the said premises”) occupied by the plaintiff is controlled premises under the Rent Restriction Act;
2. A Declaration that a Certificate of Exemption dated September 11, 1985, issued by the Rent Assessment Board for the Corporate Area and expressed to relate to Mall Plaza Shopping Centre is invalid, void and of no effect in relation to the said premises occupied by the plaintiff;
3. ...
4. ...
5. ... ”

In the end, the learned judge, found that “the Certificate of Exemption dated 11th September, 1985, applies to the entire plaza as well as to its constituent parts, including

Shop 11C". Having found in favour of the respondent on both claims, he ordered that damages be assessed. Notwithstanding his finding that the certificate of exemption applied to the premises, he found that the Supreme Court had no jurisdiction to inquire into the validity of the said certificate, as such authority had not been bestowed by Parliament.

3. In arriving at his decision that the certificate of exemption applied to shop 11C, the learned judge said that he had found guidance in the case **Data Key Processing Jamaica Ltd. v. Office and Secretarial Holdings Ltd.** (1990) 27 J.L.R. 162 . He also took into consideration the fact that "an individual valuation" had been done in respect of shop 11C. So far as the valuation base date was concerned (that having been omitted from the certificate of exemption), he concluded that since the valuation certificate referred to August 31, 1980, the certificate of exemption was to be taken to be in relation to that date.

4. On the question of whether the Supreme Court has jurisdiction to enquire into the validity of the certificate of exemption, the learned judge is noted at page 17 of the record as saying that "Mr. Robinson was at pains to say that Jewellerama was not contesting the validity of the Certificate of Exemption, but instead its applicability to Shop 11C". Notwithstanding that note, the learned judge said that he interpreted one of Mr. Robinson's submissions as an attack on the validity of the certificate. He went on to find that the Rent Restriction Act provided a system of review, which did not include the

Supreme Court. He cited principles quoted by Bingham, J.A. in **R. v The Rent Assessment Board for the Corporate Area, ex parte Glanville** (1988) 25 J.L.R. 189, as being applicable in the instant case, and concluded that they exclude the jurisdiction of the Supreme Court.

5. The written judgment that is being challenged on appeal contains a useful summary of what the judge termed "background facts". From that summary, it is clearly not disputed that the appellant is a tenant of the respondent in respect of a shop numbered 11C at 20 Constant Spring Road, St. Andrew. The shop is one of several shops in a two storey building shaped in the form of a "U". The premises are used as a shopping centre and are called "The Mall Plaza". On June 1, 1983, the respondent landlord applied to the Rent Assessment Board for a certificate of exemption in respect of each shop. In response to this application, each shop was measured and appraised and the information sent to the Land Valuation Department. On September 11, 1985, that is, more than two years later, a certificate of exemption, signed by a Rent Assessment Officer of the Rent Assessment Board was issued. It stated:

"IT IS HEREBY determined that the undermentioned premises:-

MALL PLAZA SHOPPING CENTRE
20 CONSTANT SPRING ROAD

in the parish of ST. ANDREW

is exempt from the provisions of the Rent Restriction Act on the grounds that:-

It is of such a valuation as to warrant it being

let at six dollars (\$6.00) or more per sq.ft.

DATED this 11th day of September, 1985.”

6. This certificate was served on the appellant – see page 183, paragraph 3 and pages 259 and 260 of the supplemental record of appeal. Since the issuance of the certificate, the respondent has sought and obtained several increases of rental over the years. Paragraph 3 of the affidavit of Raju Khemlani, filed in the Supreme Court on June 17, 2003, states that in or about April, 1995, the rent was raised to \$1,050,000.00 per annum. It was raised the next year, and again in 1999, 2000, and 2001. The rental in 2001 was \$2,574,000.00 per annum. The learned judge at first instance noted in his narration of the facts that in the year 2000, the relationship between the parties deteriorated badly. There followed notices to quit and threats of eviction. It was against this background that the court below was called on to determine whether the certificate of exemption applied to shop 11C.

Grounds of appeal

7. The relevant grounds of appeal are as follows:

- “1. The Learned Judge in Chambers erred in relying on the case of **Data Key Processing v Office and Secretarial Holdings (1990) 27 JLR 162** as being decisive of the issues before him as that case did not purport to lay down any general principles and the facts and circumstances of that case are markedly different to those in the instant case.

2. The Learned Judge in Chambers erred in relying on the evidence of an individual valuation having been done in respect of Shop 11c when that evidence came ex post facto many years after the issuance of the purported Certificate of Exemption and nothing on the face of the said Certificate suggested that it was either to be applicable to Shop 11c or was reliant on any individual valuation of Shop 11c.
3. The Learned Judge in Chambers erred in Law in rejecting the submission of Counsel for the Appellant that the exempt status of the property, preserved by certain transitional provisions for an interim or "moratorium" period, was defeated by the absence of a determination or an adverse determination of an Application for Shop 11c despite his express findings that the submission was sound but on the basis of the ex post facto evidence.
4. ...
5. The Learned Judge in Chambers erred in Law in his finding that the Supreme Court led (sic) no jurisdiction to enquire into the validity of a Certificate of Exemption for the provisions of the Rent Restriction Act. A tenant must be able to seek the assistance of the Court in the event that a Landlord serves on him an unlawful Notice to Quit whose only purported validity is itself based in the disputed validity of a Certificate of Exemption.
6. The Learned Judge in Chambers erred in finding that the effect of the decision of Bingham, J.A. in **R v The Rent Assessment Board for the Corporate Area Ex Parte Glanville (1988) 25 JLR 189** was to exclude the jurisdiction of the Supreme Court to enquire into the validity of the Certificates of Exemption."

The submissions

8. Mr. Gordon Robinson for the appellant submitted that, notwithstanding the voluminous material before the Court, there were only two issues involved: firstly, whether the **Data Key** case can be distinguished, and, secondly, whether the Supreme Court has jurisdiction to entertain the complaint. He said that the appellant's complaint began after the certificate of exemption had been issued, and posed these questions as being worthy of answers for the proper determination of the case:

“Does the issue of the certificate result in the exemption of shop 11C?

Does this document have the result of exempting the property?

Does the certificate attach itself to shop 11C?”

He maintained that the document was invalid, null and void so far as it has the effect of affecting shop 11C. The certificate, being a certificate for the entire plaza, did not, according to Mr. Robinson, apply to shop 11C. It was necessary, he said, for each shop to have been issued its own certificate. Separate applications, followed by a single certificate, do not comply with the law, Mr. Robinson submitted. Further, the omission of the 'prescribed date' from the body of the certificate made the certificate null and void for the purpose of providing the exemption on which the respondent has been relying.

He criticized the fact that in 2006, twenty-three years after the making of the application, the Assessment Officer was giving evidence indicating that it was not

possible to issue a separate certificate for shop 11C as that shop did not have its own title. Had the owners of the Mall Plaza sought subdivision approval, Mr. Robinson said, such would have been granted and it would have paved the way for the issuance of separate titles. Until that is done, he said, there is no certificate that bears a relationship with shop 11C. He thought that the owners might have been seeking to avoid the expense of a subdivision and the consequent payment of taxes.

9. Mr. Allan Wood for the respondent submitted that the certificate of exemption has to be taken as relating to shop 11C as there was an application made in respect of all the shops and the certificate resulted from that application. Further, he said, the certificate of exemption was served on the appellant and it (the appellant) failed to take advantage of the review process afforded by the Rent Restriction Act. Mr. Wood also submitted that a certificate of exemption does not depend on title, and pointed to the fact that the Rent Restriction Act contains no provision dealing with the quality of a landlord's title.

10. In my view, there is merit in Mr. Wood's submissions. Surely, it cannot be that the certificate of exemption should be viewed in isolation. It is the result of something having been done by the respondent. The latter, by making an application, put in train a process which gave birth to the certificate. The contents of the certificate must therefore be viewed in the context of the

application. The application form, which has an indication that the application was being made under section 3 of the Rent Restriction Act, is dated the 1st June, 1983. It is quite clear on the form that the respondent was seeking a certificate of exemption in respect of shop 11C:

"being a public/commercial building on the grounds that the premises:

- (i) ...
- (ii) is of such a valuation at the prescribed date as to warrant being let at such standard rent (exclusive of any amount payable for service) as the Minister may, by order, prescribe; ..."

In the circumstances, it is impossible to ignore the fact that at the time of signing the application form (1st June, 1983), the applicant was seeking the certificate of exemption on the ground that "the premises (were) of such a valuation at the prescribed date as to warrant being let at such standard rent etc". The date on which the certificate of exemption was actually signed is therefore irrelevant. The important date is the prescribed date, and none other. And there can be no doubt that the prescribed date was the 31st August, 1980.

11. The Rent Restriction Act provides for the incorporation of certain implied covenants in tenancy agreements or leases made after November 1, 1979, in respect of "controlled premises" which is the term used to describe "all building land, dwelling-houses or public or commercial buildings" to which the Act applies. By virtue of section 3(1)(e), a "public or commercial building" is excluded from

the operation of the Act, if an Assessment Officer appointed under the said Act certifies that "it is of such a valuation at the prescribed date as to warrant being let at such standard rent ... as the Minister may, by order, prescribe". There is no doubt that Shop 11C falls in the category of a public or commercial building. On the 18th March, 1983, the Minister responsible for the administration of the Rent Restriction Act made the Rent Restriction (Public And Commercial Buildings-Exemption) Order, 1983, which was affirmed by the House of Representatives. That Order provides for the exemption from the provisions of the Act:

"Any public or commercial building which an Assessment Officer certifies would have been of such a valuation at the 31st August, 1980, as to warrant being let at that date at a rent of—

- (a) \$6.00 or more per square foot, where such building is in the urban and suburban districts of the Corporate Area (as defined in the Second Schedule to the Kingston and St. Andrew Corporation Act";

I am of the view that a proper consideration of the application form, the certificate of exemption, and the legislation leaves no room for doubt that the certificate of exemption is in proper form, has been appropriately issued, and applies to Shop 11C.

12. The learned judge below, in arriving at his decision, said that he found "guidance" and "support" in the **Data Key Processing** case (referred to above). The appellant's first ground of appeal has charged that the judge erred in

“relying” on the said case as it did not purport to lay down any general principles, and the facts and circumstances therein are different from those in the instant case. By virtue of my earlier reasoning, I am satisfied that consideration of the **Data Key Processing** case is unnecessary for a determination of the validity of the certificate of exemption. However, it is incorrect to say that the **Data Key Processing** case does not purport to lay down any general principles due to the difference in its facts and circumstances. That case is authority for the proposition that where there has been no change in the structure of a building or in the nature of its use, a certificate of exemption issued in respect of that building remains valid if :

- (a) the ownership of the building changes hands;
and
- (b) the building has subsequently become the subject of more than one title.

In the instant case, the situation is more stable and certain than in **Data Key Processing**, in that there has been no change of ownership.

13. **Grounds 5 and 6** challenge the finding of the learned judge that the Supreme Court has no jurisdiction to enquire into the validity of a Certificate of Exemption issued under the Rent Restriction Act. In arriving at his decision, he relied on the case **R. v. Rent Assessment Board, Ex Parte Glanville** (1988) 25 J.L.R. 189. The learned judge’s reasons for judgment indicate that the judgment was delivered by Bingham, J.A.. This suggests that it was a judgment

of the Court of Appeal. However, that was not the case; it was a judgment of the Full Court of the Supreme Court. In that case, there was an application for orders of certiorari and prohibition to prevent execution in the Resident Magistrate's Court of the Rent Assessment Board's order for repayment of alleged excessive rental collected on behalf of a landlord. The notice of the hearing before the Rent Assessment Board did not conform with Rule 3 of the Rent Restriction Rules as it relates to service. The Full Court, in granting the orders sought, held that the notice was defective and the order of the Board was therefore invalid. It is difficult to see how that case can be said to provide authority for the proposition that the Supreme Court has no jurisdiction in respect of say a declaration as to the validity of a Certificate of Exemption under the Rent Restriction Act. Consequently, I am of the view that the learned judge was in error in so finding.

14. Quite apart from what I regard as a faulty application of the **Glanville** case to the present situation, there is the question of the misinterpretation of the statute by the respondent and the ancillary respondent in their support of the learned judge's finding. Section 10A of the Rent Restriction Act gives to an Assessment Officer the "power to determine the standard rent of controlled premises, and to perform such other functions as may be prescribed". Any decision of an Assessment Officer may be reviewed by the Board, which is entrusted with the power "to make such order as it thinks just and, for that

purpose, may obtain, if it thinks fit, a fresh valuation of any premises" [section 11 (1A)]. In doing its review, the Board has power to hear evidence, and an interested party may be represented before the Board by an attorney-at-law. It is clear that the intention of the legislature was to provide a forum for the speedy hearing of complaints by landlords and tenants in respect of the decision of the Assessment Officers. There is nothing in the legislation to suggest that it was the intention of the legislature to exclude from the jurisdiction of the Supreme Court technical, legal questions that may arise in respect of the validity of a certificate of exemption. If the legislature intended any such result, it would have simply provided that all matters relating to the validity of a certificate of exemption are to be determined by the Board solely. In the absence of such a provision, I cannot agree with the submission that the Supreme Court has no jurisdiction in the matter.

15. It is for the foregoing reasons that I agree with my learned brothers that this appeal is to be dismissed.

COOKE, J.A.

1. I am grateful to my brother Panton, J.A. for providing the factual circumstances pertaining to this appeal. It is my view that there is one central issue to be determined by this court. Does the certificate of exemption issued to Mall Plaza Centre on 11th September 1985 apply to shop 11c tenanted to the

appellant? A subsidiary issue is as to the proper forum to determine this issue and to this I now turn my attention.

2. The appellant's complaints seem to be two fold. Firstly, that the certificate of exemption does not apply to shop 11c and secondly that, that certificate was invalid because it did not state, in accordance with the Rent Restriction (Public and Commercial Buildings – Exemption) Order 1983, what the valuation of Mall Plaza Shopping Centre was at the 31st day of August 1980. (This Order will be subsequently reproduced.) I have set out the complaints in the order as to the emphasis placed on them by the appellant. However, logically the certificate of exemption cannot be applicable to any property if it is invalid. The appellant's challenge appears to be inconsistent as at one point he seems to be contending that:

“The tenant does not want to challenge the validity of the certificate. That particular act is not on nor [sic] in his interest to do so?”

I suppose it is the position of the appellant that the certificate of exemption neither touches nor concerns him. Yet at another point it was submitted that the certificate of exemption was invalid.

3. The learned trial judge found that the certificate of exemption applied to shop 11c and went on to state as follows:

“I also agree with Mr. Wood that this Court does not have the jurisdiction to enquire into the validity of the

Certificate of Exemption, as that authority has not been bestowed by Parliament. The Act provides a specific method of review of decisions made by a Rent Assessment Officer. It involves an application by an aggrieved party, a review by the Rent Assessment Board and an appeal to the Court of Appeal by any party aggrieved by a decision of the Board. In **R. v. The Rent Assessment Board for the Corporate Area, Ex Parte Glanville** (1988) 25 J.L.R. 189, Bingham J.A. at p. 193 in dealing with the interpretation of rule 3 (1) of the Rent Restriction Rules 1984, said:

“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 (seek) to take away the rights of individuals or to fix obligations upon them are to be construed strictly.”

I find that those principles apply to exclude the jurisdiction of this court, in respect of an enquiry into the validity of Certificates of Exemption.”

4. In this court Miss Manley for the ancillary respondent submitted that the Supreme Court had no jurisdiction to hear the matter whether as to validity or to applicability. Mr. Wood, as could be expected, sought to defend the stance of

the learned trial judge. Both counsel placed great reliance on section 11 (1A) of the Rent Restriction Act (the Act) which states:

“The Board shall have power to review any decision of an Assessment Officer under this Act and make such order as it thinks just and, for that purpose, may obtain, if it thinks fit, a fresh valuation of any premises.”

This section was construed to say that in the circumstances of this case, the Supreme Court had no jurisdiction in the matter in respect of Miss Manley and limited jurisdiction according to Mr. Wood. The appellant’s remedy lay with seeking a review pursuant to section 11 (1A). In other words the statute i.e. section 11 (1A) of the Act had provided the avenue for redress. **Barraclough v. Brown and Others** [1897] A.C. 615 was cited in support, especially a passage from the speech of Lord Herschell where he said at p 620:

“... I think it would be very mischievous to hold that when a party is compelled by statute to resort to an inferior court he can come first to the High Court to have his right to recover — the very matter relegated to the inferior court — determined. Such a proposition was not supported by authority, and is, I think, unsound in principle.”

Reliance was also placed on the **Glanville** case referred to by the learned trial judge in the extract of his judgment (par. 3 supra) and to **Century National Merchant Bank Trust Co. Ltd. v. Davies and Others** [1998] 2 W.L.R. p. 779. I shall have more to say about these two authorities later. The conclusion this court was asked to draw was that the bringing of this action by the appellant in the Supreme Court was an abuse of process — at least partially.

5. Mr. Robinson succinctly stated the case for the appellant in his skeleton arguments. This is now reproduced:

“The Tenant challenges the validity of the Notice to Quit. Ought the Tenant not to bring this challenge to the Supreme Court? The basis of the Tenant’s challenge is that the Landlord has not adhered to the Statutory Mandate of 12 months notice (or, alternatively given a reason). The Landlord purports to avoid the Statutory mandate [sic] by asserting that he has a Certificate of Exemption applicable to the rented premises.

The dispute is whether or not the provisions of the **Rent Restriction Act** apply to these premises and whether or not the Notice to Quit is valid. Is not this dispute one for the Supreme Court to resolve? **A PRELIMINARY ISSUE** surrounds the applicability of the Certificate of Exemption to the property rented and not the accuracy of the Assessment Officer’s mathematics.

The Rent Assessment Board has not been sued nor has the Officer. This is a dispute between Landlord and Tenant over an offending Notice to Quit.

Why would the Supreme Court not have jurisdiction?”

6. The question whether a review by the Rent Assessment Board is an exclusive remedy is an issue to be resolved by the statutory construction of section 11 (1A) of the Act. “The starting point must be to focus on the language and context of the statute.” (**Century National Bank**(supra)) at p. 785 – 786 H – A). Having arrived at the statutory construction it next falls to be determined whether the remedy for the complaints of the appellant lies exclusively or at all

by way of review, to the Rent Assessment Board. It is to be noted forthwith that the power of review is as to:

“...any decision of an Assessment Officer under this Act and make such order as it thinks just and, for that purpose, may obtain, if it thinks fit, a fresh valuation of any premises.” (par. 4 supra).

The decision in this case was the issuance of a certificate of exemption to Mall Plaza Shopping Centre. Section 11 (1B) provides that:

“...the Board may exercise any of the powers of the Assessment Officer.”

Section 11 (2) directs the Board to:

“... give all interested parties an opportunity of being heard and of adducing evidence.”

By Section 11 (3) evidence is to be given on oath and the proceedings ... shall:

“be deemed to be judicial proceedings for the purposes of the Perjury Act.”

Section 11 (5) gives the chairman of the Board:

“...the powers of a Resident Magistrate to compel the attendance and examination of witnesses and the production of documents.”

I have not set out all of the provisions of Section 11 (1B) which cumulatively prescribes the scope of the review process. Section 11 (12) of the Act states:

“Provided that no fees shall be taken except in accordance with rules made under this subsection.

(12) Any person aggrieved by an order of the Board may appeal to the Court of Appeal —

(a) on any ground of appeal

which involves a question
of law alone; or

- (b) on any ground of appeal
which involves a question
of mixed law and fact.”

7. After perusal of the statutory provisions it is my view that the intention of the legislature, was to give the power of review to the Rent Assessment Board to determine whether or not (in the context of this case) the certificate of exemption was properly issued. This would involve inter alia an examination of whether the Assessment Officer carried out his task according to law and what Mr. Robinson described as “mathematical calculations”. In this case there is no issue that Mall Plaza Shopping Centre should have been issued a certificate of exemption. The question is as to the applicability of that certificate to shop 11c. Is the effect of this certificate such as to include shop 11c? This was entirely a legal question which the Rent Assessment Board was neither conceived nor competent to answer. Equally, my position is the same as regards the validity issue. Here the questions are whether the certificate of exemption in its form was in obedience to the statutory dictates and if not, what was the effect of the want of compliance. That was a legal question which was outside the jurisdiction of the Rent Assessment Board. In any event a determination of the validity issue was imperative in the resolution of the dispute between the parties. The **Glanville** authority is not helpful. This case concerned the situation where one party was not given the requisite notice to attend at hearing before the Rent

Assessment Board. The passage from **Glanville** cited by the learned trial judge (par. 3 supra) and relied on by the respondents speaks to the obligation of the Rent Assessment Board to give adequate notice to an affected party in respect of a prospective hearing. It will be recalled that section 11 (1B) (2) directed that the Board is to give interested parties an opportunity to be heard. This was the procedural requirement of which Bingham, J. (as he then was) was addressing. Further **Barraclough** is not applicable in that the appellant was not compelled to seek relief only by way of review by the Rent Assessment Board. The learned trial judge was wrong in declining jurisdiction to adjudicate on the validity of the exemption order. There is merit in the submissions of Mr. Robinson on this aspect of the appeal.

8. Before embarking on a discussion as to the validity of the certificate of exemption, I wish to refer to the Court of Appeal Rules 2002. Rule 1.16 (1) states that:

“An appeal shall be by way of re-hearing.”

Rule 1.16 (4) states that:

“The court may draw any inference of fact which it considers is justified on the evidence.”

I will begin the discussion by setting out the Rent Restriction (Public and Commercial Buildings Exemption) Order 1983.

“THE RENT RESTRICTION ACT

ORDER
(under section 3 (1) (e) (ii))

THE RENT RESTRICTION (PUBLIC AND COMMERCIAL BUILDINGS-EXEMPTION) ORDER, 1983

(Made by the Minister on the 18th day of March, 1983 and affirmed by the House of Representatives)

[5th April, 1983.]

1. This Order may be cited as the Rent Restriction (Public and Commercial Buildings — Exemption) Order, 1983.
2. Any public or commercial building which an Assessment Officer certifies would have been of such a valuation at the 31st day of August, 1980, as to warrant being let at that date at a rent of —
 - (a) \$6.00 or more per square foot, where such building is in the urban and suburban districts of the Corporate Area (as defined in the Second Schedule to the Kingston and St. Andrew Corporation Act); or
 - (b) \$4.00 or more per square foot, where such building is in any area outside the urban and suburban districts of the Corporate Area as so defined,

is exempt from the provisions of the Act.”

Next I will set out the Exemption Certificate:

“Ref. No. 34849/2/83

THE RENT RESTRICTION ACT

(Section 3)

CERTIFICATE OF EXEMPTION

IT IS HEREBY determined that the undermentioned premises:—

MALL PLAZA SHOPPING CENTRE

20 CONSTANT SPRING ROAD

In the parish of: ST. ANDREW.

is exempt from the provision of the Rent Restriction Act on the grounds that:—

It is of such a valuation as to warrant it being let at six dollars (\$6.00) or more per sq. ft.

DATED this 11th day of September, 1985.”

The challenge to the validity of the certificate of exemption is that there is nothing on the certificate which specifically stated that the valuation was such as “would have been of such a valuation at the 31st day of August 1980”. It was argued that the absence of reference to the prescribed date (31st August 1980) was fatal to the validity of the certificate of exemption. I do not agree. The Assessment Officer was given the statutory task of making a valuation as of and at the 31st August 1980, before a requested certificate of exemption could be issued. It must be assumed that such Assessment Officer did just that. An aggrieved party is entitled to challenge the integrity of the valuation and in particular with reference to the prescribed date before the Rent Assessment Board. Further there was evidence that the valuation reports on which the exemption certificate was founded bore the Valuation Base Date as August 31, 1980. These reports carried the reference number 34849/2/83 which pertains to all the documents relevant to the application of Mall Plaza Shopping Centre. Specifically the certificate of exemption had that number. Therefore it is without even the slightest hesitation that it is justifiable to draw the inference of fact that

the certificate of exemption spoke to the valuation as at the prescribed date. I do not find that there is any substance in this complaint.

9. Mall Plaza Shopping Centre is one building which had been partitioned into 35 individual shops of which 11c, tenanted to the appellant, was one. On 1st June 1983 the respondent/landlord made 35 applications for exemption under the Act for each shop. By an exemption certificate dated the 11th September 1985 the Mall Plaza Shopping Centre received exemption. The Assessment Officer Leyton Baker, involved in the procedures leading to the grant of the certificate of exemption explained in his affidavit, why despite there being 35 separate applications there was the issuance of just one to Mall Shopping Plaza.

He said at paras. 11 — 12 as follows:

“11. Given the fact the premises has one title, the Rent Assessment Board could not have prepared a Certificate of Exemption for each shop, but prepared a Certificate for the One premises, 20 Constant Spring Road, Saint Andrew.

12. The Certificate of Exemption issued to the Defendant in this matter is consistent with the type of Certificate of Exemption which is issued by the Rent Assessment Board when a Plaza is comprised in one title.”

10. Is the certificate of exemption applicable to shop 11c? The learned trial judge so held and expressed himself thus:

"Having noted these aspects I now turn to the major thrust of Mr. Robinson's submission. I find guidance in the decision in *Data Key Processing v. Office and Secretarial Holding Ltd.* (1990) 27 J.L.R. 162. In that case a tenant of a portion of a building sought to challenge the validity of a certificate of exemption, on bases including the fact that "the certificate having been issued in respect of the whole building at the time prior to (its) division into strata titles, it (could not) apply to the portion of the building in question". The Court of Appeal held that "the certificate of exemption is issued in respect of a building and remains good when no longer registered under one title but separate ones" (page 162 E). In that case Forte, J.A (as he then was) found merit in the submissions of learned counsel for the landlord in *Data Key*, who had submitted (page 166 B-C).

"... that the Certificate applies to the entire building and not to the owners or the Titles, and ... that the certificate issued for the whole building is valid in respect of each part, even though the building was divided into multiple legal entities and separate titles were obtained for them separately." (Emphasis supplied.)

The present situation in respect of Shop 11C is materially identical to the situation which existed prior to the division into strata titles for the building in *Data Key*. Like *Jewellerama*, the appellant was a tenant of a portion of a building, and a Certificate of Exemption had been issued for the entire building. Despite the obvious difference that there has been no separate title issued subsequently for Shop 11C, it is my view that the principle outlined above is applicable to the instant case."

Mr. Robinson attempted to distinguish the circumstances in **Data Key** from the instant case. He submitted that the distinctions were:

- (a) In **Data Key**, there was no evidence of intent that any part of the building would not be covered by the Certificate. The Certificate was issued for the entire building pursuant to an Application for a Certificate covering the entire building in accordance with Section 3 (1) of the Rent Restriction Act. In this case, the Certificate issued for the Mall Plaza was not pursuant to an Application made for the Mall Plaza. Separate applications were made for each shop individually (including Shop 11c) but no individual Certificates were issued. Accordingly, the Certificate issued was not "pursuant to the application made" for Shop 11C; was issued contrary to Section 3 (1) and inapplicable to any individual shop.
- (b) In **Data Key** no evidence was available to the Court from the Rent Assessment Officer as to his reason for acting. In this case, the evidence of the Assessment Officer is unambiguously that he took a specific and deliberate decision to refuse the Application for a Certificate of Exemption for Shop 11c and instead issue a Certificate exempting the entire Plaza qua The Mall Plaza.
- (c) In **Data Key** the building applied for was at all material times **ONE BUILDING**. Subsequent to the issue of the Certificate, it was divided into Strata Lots but **AT THE TIME OF THE ISSUE OF THE CERTIFICATE**, it was clear beyond peradventure, as Learned Counsel for the Landlord submitted to the Court of Appeal, that **"the Certificate issued for the whole building is valid in respect of each part ..."** Conversely, the Mall Plaza was at all material times partitioned into 35 shops with the intent and practice from inception that these shops should be separately rented to individual tenants. It is clear from the construction and configuration of the Plaza that it was **NEVER ONE BUILDING**. Everybody understood that separate Certificates would be

the proper way to proceed and in fact the Respondent made 35 separate applications for 35 separate Certificates...”

The short answer to these “distinctions” is that the Mall Plaza is one building in respect of which a valid certificate had been issued. Therefore the proffered distinctions do not go to the central issue of the applicability of the certificate of exemption to shop 11c. I cannot fault the reasoning of the learned trial judge in coming to his conclusion.

11. It is only left for me to say that I would dismiss the appeal and affirm the order made by the Court below. The respondents should have the costs of this appeal.

HARRISON , J.A:

Introduction

1. This is an appeal from the judgment of Brooks J. dated 29th September 2006 whereby judgment was delivered in favour of Rock Investments Limited (“the Respondent”) against Jewellerama Limited (“the Appellant”) in respect of suit C.L. I015 of 2001 and claim HCV 2033 of 2004. In the former action, the Appellant sought the following declarations:

“a) That it was in exclusive possession of Shop 11C of the Mall Shopping Centre (“The Mall”) as an annual or alternatively a monthly tenant;

b) That the property was controlled;

(c) That a Certificate of Exemption which was issued and expressed to relate to the Mall was invalid, void and of no effect in relation to Shop 11C occupied by the Appellant and;

(d) That the notice to quit addressed to the Appellant was also invalid, void and of no effect.”

In Claim HCV 2033 of 2004, the Respondent on the other hand, sought to recover \$12,977,213.68, being the amount owing to the Respondent in respect of water charges and the Appellant’s holding over in possession of Shop 11C.

2. Brooks J, in Chambers, on September 6, 2006 was asked to decide two preliminary issues prior to the trial of the matters. They are:

“a) Whether or not the Certificate of Exemption issued under the Rent Restriction Act in respect of the Mall Shopping Centre, 20 Constant Spring Road, Kingston 10 in the parish of St. Andrew, applied to shop 11C occupied by the Appellant and;

b) Whether the Supreme Court had jurisdiction to decide on the validity of the Certificate of Exemption.”

These two issues are also central to the determination of this appeal. They require some reference to the background facts of the case.

The background facts

3. On or about the 1st June 1983, the Rent Assessment Board received thirty-five (35) applications from Rock Investments Limited, which sought exemptions under the Rent Restriction Act for shops situated at the Mall.

4. Shop 11C, Jewellerama Limited, was one of the shops for which exemption was sought. The applications were based on grounds that the premises were of such a valuation at the prescribed date as to warrant being let at such standard rent as the Minister may, by order, prescribe.

5. On the 18th day of October, 1983, Rent Assessment Board Inspectors were dispatched to the premises to carry out inspection and measurements. Their reports were subsequently sent to the Land Valuation Department which at that time was assigned to do valuations for the Rent Assessment Board.

6. Officers from the Land Valuations Department visited the premises on the 7th day of August 1985 in order to do further inspections. Each shop including Jewellerama Limited, at shop 11C, was valued. Valuation certificates were prepared and sent to the Rent Assessment Board. The Certificate of Valuation for shop 11C is exhibited at page 446 of the Record of Appeal. I have extracted the relevant portions of this certificate and they are set out below:

"THE RENT RESTRICTION ACT
CERTIFICATE OF VALUATION
(PURSUANT TO SECTION 14)

CASE REFERENCE: 34843/2/83

ASSESSMENT REQUESTED BY: Rent Assessment Board/Corporate Area.

Date of Inspection: August 7, 1985. Valuation date base:
August 31, 1980.

DESCRIPTION OF PROPERTY

Property Name/Address: Mall Plaza Shopping Centre –
Shop 11C (Jewellerama)

Location: 20 Constant Spring Road Kgn. 10

Title: Regn. of Titles Act ...Volume(s) 939...Folio..243

Valuation No: 105C 5Y 19 006 (part)

Area of : 2281 sq. ft.

Name and Address of Owner: Rock Investment Ltd.

Shop 11D Mall Plaza
20 Constant Spring Road, Kgn. 10

Name and Address of Applicant: Rock Investment Ltd.

Shop 11D Mall Plaza
20 Constant Spring Road, Kgn. 10

Status of Applicant: Owner

.....

Valuation:

I hereby certify that in my opinion the valuation of the
property described above at the date indicates is:

(1) One Hundred and Forty-four Thousand Dollars
(\$144,000.00)

(2) The value of the building is: One Hundred and Three
Thousand Dollars (\$103,000)

(3) The value of the land is: Forty-one Thousand Dollars
(\$41,000)

(4) The value of the furniture: N/A

Dated August 29, 1985

Sgd. Wayne Murray

For Commissioner of Valuations

8 Ardenne Road

Kingston 10

Jamaica.

N.B This premises qualify for exemption under Section 3(e) (ii) of the Rent Restriction (Amendment) Act.”

7. On the 11th day of September, 1985, one Exemption Certificate bearing reference number 34849/2/83, was issued however by the Rent Assessment Board in respect of the Mall since it was not subdivided into separate strata titles but had remained vested in a single title comprised in Volume 939 Folio 243 of the Register Book of Titles. The Certificate of Exemption that was issued reads as follows:

“Ref. No. 34849/2/83

THE RENT RESTRICTION ACT

(Section 3)

CERTIFICATE OF EXEMPTION

IT IS HEREBY determined that the under-mentioned premises:

MALL PLAZA SHOPPING CENTRE20

CONSTANTSRING ROAD

ST. ANDREW

in the Parish of ST. ANDREW

is exempt from the provisions of the Rent Restriction Act on the grounds that:

It is of such a valuation as to warrant it being let at six dollars (\$6.00) or more per sq. ft.

DATED this 11th day of September 1985.

Sgd

Rent Assessment Officer

Rent Assessment Board.”

8. Leyton Baker, the Rent Assessment Officer, deponed as follows at paragraphs 11 and 12 respectively of his affidavit filed May 29, 2006:

"11. Given the fact that the premises has one title, the Rent Assessment Board could not have prepared a Certificate of Exemption for each shop, but prepared a Certificate for the one premises, 20 Constant Spring Road, Saint Andrew.

12. The Certificate of Exemption issued to the Defendant in this matter is consistent with the type of Certificate of Exemption which is issued by the Rent Assessment Board when a Plaza is comprised in one title."

The first issue

Whether the Certificate of Exemption applied to shop 11C.

9. Mr. Wood, Counsel for the Respondent, relied on ***Data Key Processing Jamaica Limited v Office and Secretarial Holdings*** (1990) 27 JLR 162 both here and below to say that the certificate was valid with respect to shop 11C. The learned judge also relied on this authority and at page 8 of his written judgment stated inter alia:

"I find guidance in the decision ***Data Key Processing v Office and Secretarial Holdings Ltd.*** (1990) 27 JLR 162".

10. Mr. Gordon Robinson, for the Appellant, submitted however in his skeleton arguments that Data Key Processing is distinguishable from the instant case for the following reasons:

"(a) In **Data Key** there was no evidence of intent that any part of the building would not be covered by the Certificate. The Certificate was issued for the entire building pursuant to an Application for a Certificate covering the entire building in accordance with Section 3 (1) of the Rent Restriction Act. In this case, the Certificate issued for the Mall Plaza was not pursuant to an Application made for the Mall Plaza. Separate applications were made for each shop individually (including Shop 11C) but no individual Certificates were issued. Accordingly, the Certificate issued was not "pursuant to the application made" for Shop 11C; was issued contrary to Section 3 (1) and inapplicable to any individual shop.

(b) In **Data Key** no evidence was available to the Court from the Rent Assessment Officer as to his reason for acting. In this case, the evidence of the Assessment Officer is unambiguously that he took a specific and deliberate decision to refuse the Application for a Certificate of Exemption for Shop 11c and instead issue a Certificate exempting the entire Plaza qua The Mall Plaza.

(c) In **Data Key** the building applied for was at all material times **ONE BUILDING**. Subsequent to the issue of the Certificate, it was divided into Strata Lots but **AT THE TIME OF THE ISSUE OF THE CERTIFICATE**, it was clear beyond peradventure, as Learned Counsel for the Landlord submitted to the Court of Appeal, that "the certificate issued for the whole building is valid in respect of each part ..." Conversely, the Mall Plaza was at all material times partitioned into 35 shops with the intent and practice from inception that these shops should be separately rented to individual tenants. It is clear from the construction and configuration of the Plaza that it was **NEVER ONE BUILDING**. Everybody understood that separate Certificates would be the proper way to proceed and in fact the Respondent made 35 separate applications for 35 separate Certificates. Due to the fault of the Landlord (he had elected not to go to the expense obtaining Strata

Titles) he could not and did not succeed in any of these separate Applications. Accordingly the history and factual context of the Mall Plaza, significantly different from that of 4 Duke Street, makes it equally clear beyond peradventure that the Mall Plaza Certificate, unlike the 4 Duke Street Certificate, was never intended to apply to each part of the Plaza but only to the Plaza in its entirety if ever it was so rented out. And this specific history and context must be taken in conjunction with the express words of the Rent Restriction Act, section 2(1) which defines public or commercial building as follows:

“public or commercial building” means a building, or a part of a building separately let, or a room separately let, which at the material date was or is used mainly for the public service or for business, trade or professional purposes, and includes land occupied therewith under the tenancy but does not include a building, part of a building or room when let with agricultural land;

The different approaches to single professional buildings and multiple partitioned shopping plazas are high-lighted in the Court of Appeal’s Decisions in *Virgo Enterprises Limited v Newport Holdings Limited* 26 J.L.R. 159 and *George Graham v Lane Investments Limited* 29 J.L.R. 109.

(d) The main issue raised and addressed by the Court of Appeal in the *Data Key* case was whether a change of ownership invalidated the Certificate and as Learned Counsel submitted and the Court of Appeal accepted, a Certificate of Exemption does not apply to owners but to premises. The *Data Key* case did not address issues of applicability of Certificates of Exemption in circumstances such as are present in this case and the Court was careful not to issue any proclamation of general principle.”

11. In the *Data Key Processing* case, the evidence revealed that prior to the issue of strata titles for the building, part of which was occupied by the

tenant, a Certificate of Exemption had been issued pursuant to the provisions of the Rent Restriction Act covering the entire building. It was contended inter alia, on appeal, that the certificate of exemption had been issued in respect of the whole building at a time prior to its division into strata titles and could not apply to the portion of the building in question after that portion had acquired a separate title. The Court of Appeal held that where a certificate of exemption is issued in respect of a building it remains good even after the building was re-registered into separate strata titles.

12. Mr. Gordon Robinson, submitted that shop 11C is a public or commercial building on its own, separate and apart from the 35 shops in the Mall Plaza and separate from the Mall itself. He referred to section 2(1) of the Rent Restriction Act which states as follows:

"2(1) ... "public or commercial building" means a building, or a part of a building separately let, or a room separately let, which at the material date was or is used mainly for the public service or for business, trade or professional purposes, and includes land occupied therewith under the tenancy but does not include a building, part of a building or room when let with agricultural land ..."

He therefore submitted that for the certificate of exemption to be applicable to shop 11C, it must be issued pursuant to an application made for that building and that it must be issued in respect of that building. The Respondent, he said, must have realized the necessity for separate certificates of exemption hence this

was the reason why it made 35 separate applications for separate exemptions for each of the 35 shops.

13. Mr. Robinson's second prong of attack concerned the absence of the valuation date base, that is, August 31, 1980, in the certificate of exemption. He submitted that this was fatal to the validity of the certificate of exemption. The Rent Restriction (Public and Commercial Buildings Exemption) Order 1983 provides as follows:

"THE RENT RESTRICTION (PUBLIC AND COMMERCIAL BUILDINGS-EXEMPTION) ORDER, 1983

(Made by the Minister on the 18th day of March, 1983 and affirmed by the House of Representatives) (5th April, 1983)

1. This Order may be cited as the Rent Restriction (Public and Commercial Buildings - Exemption) Order, 1983.
2. Any public or commercial building which an Assessment Officer certifies would have been of such a valuation at the 31st day of August, 1980, as to warrant being let at that date at a rent of -
 - (a) \$6.00 or more per square foot, where such building is in the urban and suburban districts of the Corporate Area (as defined in the Second Schedule to the Kingston and St. Andrew Corporation Act); or
 - (b) \$4.00 or more per square foot, where such building is in any area outside the urban and suburban districts of the Corporate Area as so defined, is exempt from the provisions of the Act."

14. Mr. Wood submitted however that it could be inferred from the following facts that the certificate of exemption did apply to shop 11C:

"(a) The Certificate of Exemption was consistent with the type of certificate which is issued by the Rent Assessment Board when a Plaza is comprised in one title.

(b) The Certificate of Valuation for shop 11C (Jewellerama Ltd.) bore the reference number 34849/2/83, and that was the reference which the Rent Assessment Board mentioned on the Certificate of Exemption.

(c) The date on the Certificate of Exemption, the 11th day of September, 1985, merely referred to the date on which the Certificate was issued, but the valuation base date was in fact August 31, 1980 as stated in the valuation certificate for shop 11C.

(d) Following receipt of the Certificate of Exemption by letter dated 10th October 1985 the Respondent had advised the Appellant of the Certificate of Exemption for the Mall Plaza Shopping Centre for which Shop 11C was part and had provided a copy of the Certificate."

15. In my judgment, there is merit in the submissions of Mr. Wood. Sufficient facts had been established for one to draw the inference that the exemption applied to shop 11C. It is patently clear that on the facts of this case, a single certificate of exemption could be issued for the entire structure known as the Mall Shopping Centre of which shop 11C occupied by the Appellant forms a part of. There was evidence that the entire Mall Plaza Shopping Centre is in fact a single multiple storey building, which despite being partitioned into several shops or units, remains a single building with each unit within that building connected by common walls and sharing common covered walkways and parking facilities.

16. It is also my view, that the absence of the valuation base date is not fatal to the validity of the certificate of exemption. The footnote which appears on the certificate of valuation in respect of shop 11C states that that premises qualified for exemption under section 3(1) (e)(ii) of the Rent Restriction Act. This fact together with those referred to above would lead one to conclude that the documents which the learned judge had before him were sufficient to draw the inference that the document headed "Certificate of Exemption" spoke to the valuation of the Mall as at August 31, 1980.

17. In my judgment, the submissions made by Mr. Robinson with regard to the first issue, therefore fail.

The second issue

Whether the Supreme Court had the jurisdiction to entertain the complaint regarding the validity of the Certificate of Exemption.

18. In **Virgo Enterprises Limited et al v Newport Holdings Limited and Rent Assessment Officers** Miscellaneous Appeals 1, 2 and 3/89 (unreported) delivered on 15th May, 1989 the primary question with which this Court was concerned related to whether a tenant had a right to a hearing in respect of the valuation process carried out by an Assessment Officer of the Board in determining whether or not a Certificate of Exemption ought to be granted. This Court at page 4 laid down the procedural requirement to be

followed by the Board in dealing with decisions made by the Assessment Officer.

Carey J.A. said at pages 4 and 5:

"As well, the Act sets up a regime for dealing with decisions of an Assessment Officer by the Rent Assessment Board. Both the landlord and tenant have the right to invoke the machinery provided. Section 11 enacts, so far as is material, as follows:

11. (1A) The Board shall have the power to review any decision of an Assessment Officer under this Act and make such order as it thinks just and for that purpose, may obtain, if it thinks fit, a fresh valuation of any premises.

(1B) Without prejudice to the generality of subsection (1A), the Board may exercise any of the powers of the Assessment Officer.

(2) Before making any order, a Board shall give all interested parties an opportunity of being heard and of adducing evidence.

(3) Evidence shall be given on oath and the proceedings of a Board shall be deemed to be judicial proceedings for the purposes of the Perjury Act.

From this, it is apparent that the Board exercises judicial functions but of even greater significance is the power given to the Board to perform any of the powers of the Assessment Officer. The Board could, therefore, itself, act as a valuer or an inspector which means that it is free to act not only as the arbiter in an adversarial sense, but also as an inquisitor or investigator, where the circumstances require such a course of action."

19. It was submitted by Mr. Wood that no steps were taken by the Appellant to have the certificate of exemption reviewed and that the challenge to the certificate of exemption was first made in the action filed on 5th April 2001,

almost 16 years later. He further submitted that the learned Judge had correctly discerned that the Appellant's contention was an attack on the validity of the certificate of exemption and that he had correctly concluded that the Court had no jurisdiction to launch an enquiry into the validity of the certificate of exemption.

20. Mr. Robinson submitted however, that the real issue in the case was whether the Supreme Court has jurisdiction to entertain a law suit by a tenant against its landlord claiming breach of the tenancy agreement in that an allegedly invalid notice had been served and consequently an invalid eviction was about to take place.

21. He submitted that an appeal to the Rent Board would concern the re-assessment of valuations and or calculations made in order to dispute the validity of the certificate. He argued however, that the preliminary issue was concerned with the applicability of the certificate of exemption to the property rented and not the accuracy of the Assessment Officer's mathematics. More specifically, he argued that the Respondent wished to challenge the Appellant's right to use a particular certificate of exemption as the basis of a Notice to the Appellant/tenant to quit premises rented by the tenant of shop 11C but not named in the certificate.

22. In my judgment, I would agree with Mr. Robinson that the Supreme Court had the jurisdiction to deal with this preliminary issue. The learned judge was therefore in error when he declined to do so. The issue he had to determine was not one that fell under section 11 of the Rent Restriction Act. Rather, he was called upon to decide on a question of law, that is, did the certificate of exemption apply to shop 11C since there was no specific reference to it in the

certificate. I have already expressed my views on the certificate of exemption and have concluded that a single certificate of exemption could be issued for the entire Mall of which shop 11C occupied by the Appellant forms a part.

Conclusion

23. I would therefore dismiss the appeal and affirm the order of the learned judge below with costs to the Respondent.

PANTON, J.A.

ORDER:

The appeal is dismissed. The order made by the Court below is affirmed. Costs of the appeal to the respondents to be agreed or taxed.

