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E.A. McCAFFRIE *v.* TENANTS

[COURT OF APPEAL (Robinson, P., Rowe and Wilkie JJ.A.) October 12 & November 2, 1979]

Landlord and tenant—Standard Rent for four flats—Test to be applied in arriving at assessed value of premises for determining standard rent—Rent Restriction Act, s. 19.

On the hearing of an application for determining standard rent for four flats the Rent Restriction Board for the Corporate Area relied on the assessed value of the premises (by its Valuator) based on the costs of their construction. On appeal by Landlord.

Held: (i) the proper test for arriving at the assessed value of premises for determining the standard rent is the market value of premises at the time of the Rent Board's determination.

(ii) Where the Board is satisfied that it is not practicable to determine the market value, then in accordance with section 19 (7) it may have regard to all the circumstances, including the construction costs.

Miss Sonia Jones for the landlord/appellant.

ROBINSON, P.: On the 12th October, 1979, we allowed the appeal of the Landlord/Appellant in this matter on the ground that the test applied in arriving at the assessed value of the premises for the purpose of determining the standard rent was not a proper one, and that the proper test should be the market value of the premises at the time of the Board's determination. We promised to put our reasons in writing and this we now do.

At the hearing before the Rent Board for the Corporate Area on 30th October, 1978 and 29th November 1978, evidence was given by the Landlord that the land on which the building, consisting of 4 flats, was erected was on the Tax Roll at a valuation of $17,000 and that the cost of construction of the building itself (in 1976 and 1977) was $90,000.

Also giving evidence on his behalf was the Managing Director of a well-known realty company who opined that the then replacement cost of the building was in the region of $84,856.00. This, he told the Chairman, was its replacement value. On the other hand, the Board called, as it was entitled to do, its own valuator who valued the land at $20,161.00 (presumably this was market value—it could hardly be anything else), and the building at $49,461.00 which, he told the Chairman, was based on his opinion of what it should have cost "according to when the building was constructed".

The Chairman then announced that the Board felt that "in order to do justice it would not be fair to assess the rentals of the flats based on the replacement value, but since this is a fairly new building that was built about 1976 it would be much more equitable to take the valuation given by the Board's valuator based on the cost as erected". The Board then proceeded to determine the standard rentals of the 4 flats using the values as given by its own valuator.

It is to be observed that the Board's valuator had stated that a rise in building costs took place in 1977 and that prior thereto there had been a gradual rise. On the other hand, the valuator called by the Landlord had testified that building costs had been increasing at a rate of about 4% per month. He pointed out, inter alia, that over the last eighteen months the cost of a bag of cement had risen from $1.20 to $4.00 "by the time it is delivered"; that a low down toilet which was $35.00 is now $250.00 and that the price of nails, a basic item, had gone up by over 1000%. These facts were not disputed.

Also to be observed is that no enquiry was made as to what was the market value of the premises (i.e. both land and building).

Such an enquiry would have been a pre-requisite for determining the standard rent of certain premises under the provisions of the Rent Restriction Act as existing prior to the Rent Restriction (Amendment) Act, 1973, as then the standard rent of a dwelling house let for the first time on or after 1st January, 1959 was to be "a rent of which the annual rate is equal to one-tenth of the market value of the dwelling-house assessed on the principles of subsection (1) of Section 7A of this Act". Section 7A (1) had provided that

> "A Board shall, upon the application of a landlord or of a tenant of a dwelling-house so to do, assess the market value of the dwelling-house at the date of consideration of the application, estimated on the basis that it is intended to continue to use the dwelling-house substantially for the purpose of renting to tenants as a dwelling-house or place of residence."

Prior to the amending Act of 1973, there was also provision for exempting from the clutches of the Rent Restriction Act any dwelling-house the market value of which as assessed by the Board exceeded £3,600 (see the then Section 7A (2)).

These aforementioned provisions, however, were repealed by the Rent Restriction (Amendment) Act, 1973 and the present provisions for determining the standard rent of premises were substituted. These new provisions do not expressly speak of market value, but a close examination leaves no reason for doubt that the concept of market value was by no means abandoned. What the new provisions do ensure is that a Rent Board is not precluded from determining the standard rent of premises by the mere fact that for whatever reason, it is not possible or practicable to determine its market value in the particular category of letting with which the Board is concerned.

For example, if a Rent Board were asked to determine the standard rent of a dwelling-house in a popular residential area, it might have no difficulty in determining the market value of that dwelling-house. But what if the area had become so run-down that people were moving out, that owners were trying to sell but could find no buyers—that in short, the premises, for the time being at any rate, had not ascertainable market value? Or what if the area had changed in character and had become predominantly commercial? It may then be that the premises would have a very good market value as commercial premises, but little or none whatever as a dwelling-house. How would the Board then be able to determine "the market value of the dwelling-house at the date of consideration of the application, estimated on the basis that it is intended to continue to use the dwelling-house substantially for the purpose of renting to tenants as a dwelling-house or place of residence?"

It was problems like these which were met and overcome by the new provisions. These now provide that a Rent Assessment Board "shall, in determining the standard rent of any premises in any category of letting, act according to the principle that the standard rent shall be a rent of which the annual rate is such percentage of the assessed value of the premises as the Minister shall prescribe by order." (See S. 19 (1)).

The assessed value of the premises is defined as meaning "the value of the premises as assessed by a Board -

(a) "at the date of determination by the Board of the standard rent, and

(b) on the basis that it is intended that those premises will be at all times thereafter be used substantially for letting in the category of letting in which they are at that date proposed to be let." (See S. 19 (4)).

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

And it is now provided, by Section 19 (7) that-

"Where a Board is satisfied that it is not practicable to determine the standard rent of any premises in accordance with the provisions of subsection (1), the Board may determine the same to be such rent as seems just, regard being had, so far as the Board thinks practicable, to all the circumstances, including the actual or estimated cost of the premises, any amenities enjoyed therewith and locality."

Look at this provision how you will, it clearly indicates that the actual or estimated cost of construction is only one of the many ingredients of "all the circumstances" to be considered. And these seem to be precisely what a Realtor would take into account in advising a client to sell or to buy at a fair price.

Interestingly enough, it is also provided by S. 19 (5) of the Rent Restriction Act that -

"Where -

(a) a dwelling-house forms part of any premises; and

(b) a Board is not satisfied that such dwelling-house is reasonably marketable *separately* from the remainder of those premises; and

(c) the remainder of those premises is used or intended to be used mainly for the purpose of a dwelling or dwellings.,

the Board may determine the standard rent of those premises in accordance with subsection (1) as if they were let as a single dwelling-house and thereupon determine the standard rent of the dwelling-house referred to in paragraph (a) of this subsection by making such apportionment as seems just."

Clearly what is contemplated here is that if the entire premises were marketable as a dwelling-house then the Board should endeavour to ascertain the market value of the entire premises and do an apportionment.

It seems to me therefore, that in normal circumstances, a Rent Board should base its assessment of the value of premises on the market value of those premises as at the date it is proceeding to determine the standard rent. If, of course, it is not possible or practicable, for whatever reason, to determine the market value of the premises in the contemplated category of letting, or at all, then the Board may pray in aid the provisions of S. 19 (7).

On the particular facts of this case, there did not appear to be any difficulty in the way of ascertaining a market value for these premises as a dwelling-house and in the circumstances the Board erred in not so doing.

In any event, the Board was clearly wrong in basing its "value of the premises" solely on its Valuator's estimate as to the cost of the building "at the time when the building was constructed". That this could not possibly be the intention of the Legislature may be seen from the fact that Sec. 18 (3) (b) of the Act provides that -

"The landlord or the tenant of any premises to which this Act applies may -

(a) .....

(b) after the expiration of a period of five years after the last determination of the standard rent of the premises appropriate to the category of letting in which they are let, apply to a Board to determine a new standard rent of the premises, appropriate to that category of letting."

Surely the actual cost of construction of a building "at the time when the building was constructed" cannot vary every five years. Replacement value could. Market value could. And for the reasons hereinbefore advanced it is the market value that seems indicated, subject, of course, to the provisions of Section 19 (7) in the event that it is not practicable to obtain an appropriate market value.

It is for the above reasons that the appeal was allowed and a new hearing ordered.

ROWE, J.A.: I agree.

WILLKIE, J.A.: I also agree.

D.P.P. *v.* MICHAEL FEURTADO AND ATTORNEY-GENERAL AMICUS CURIAE

[COURT OF APPEAL (Henry and Kerr, JJ.A. and Rowe J.A. (Ag.) October 1-5; November 16, 1979]

Constitutional Law—Right to fair hearing within reasonable time—Twenty-two months elapsing between date of respondent's arrest and date of preferment of indictment—Respondent deemed to be prejudiced by delay—Jurisdiction of Resident Magistrate—Duty of Resident Magistrate to fix trial date. Respondent should have sought alternative remedy from supervisory jurisdiction of Supreme court—Action against appellant unjustified and untenable —Constitution, ss. 13-25; Judicature (Resident Magistrates) Act, ss. 169, 272 - 274, 279; —Justices of the Peace Jurisdiction Act, s. 39.

The respondent M.F. was arrested on October 7, 1976 on informations charging him with forgery, uttering forged instruments and conspiracy. On December 11, 1978 twenty-two months later, an indictment was drafted and the Crown was in a position to ask the Resident Magistrate for an order for trial on the indictment. In those 22 months, the respondent attended the Resident Magistrate's Court on 16 occasions. Four of these occasions were listed as trial dates and all the others as "mention dates". On December 11, 1978 the Crown had a draft indictment. A copy of the indictment had not been supplied to the respondent prior to that date notwithstanding an undertaking by the Crown so to do. The respondent sought an adjournment on the ground that the charges contained in the indictment were different from that contained in the single resurrected charge and consequently the defence was unprepared for trial. The adjournment was granted and April 2, 1979 was decided as the new trial date.

The respondent elected not to stand trial before the Resident Magistrate on April 2, 1979, instead choosing to invoke the jurisdiction of the Supreme Court under section 25 of the Constitution, seeking a declaration that he ought not to be tried and should be unconditionally discharged, by reason of gross, unconscionable and unreasonable delay in the prosecution of the case. The Full Court, by a majority, ruled that the respondent had been deprived of his constitutional right to a fair hearing within a reasonable time and that the respondent be discharged unconditionally. In his affidavit the respondent claimed that his position as a garage proprietor had been drastically altered since his arrest to the extent that he had had to dispose of his business in its entirety. He swore that he had been suffering bouts of depression and was unable to take up the reins of his life. He further stated that his position had been changed to his detriment because three named potential witnesses as to facts had migrated and that their addresses overseas were not known to him. The appellants appealed to the Court of Appeal, contending that the Full Court of the Supreme Court had erred in finding that the respondent was not afforded a fair hearing within a reasonable time.

Held: (i) that what was a reasonable time would depend upon the circumstances of each case, including the nature of the case, the formalities of the pre-trial procedure, the facilities existing and the efforts that had been made to conclude the proceedings, and reasonable time was to be calculated as from the date of arrest.

(ii) that regard must be had to the realities; if by the manoeuvre of laying new information the prosecution could delay the commencement of the computation as to reasonable time the constitutional right of the individual would have no practical meaning; and the term "hearing" meant proceeding concerned with terminating litigation and ought not to be interpreted so widely as to include mere mention dates.