

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT MISCELLANEOUS 1/91

BEFORE: THE HON. MR. JUSTICE CAREY, P. (AG.)
THE HON. MISS JUSTICE MORGAN, J.A.
THE HON. MR. JUSTICE BIGHAM, J.A. (AG.)

BETWEEN STATIONERY MANUFACTURERS LIMITED APPLICANT/APPELLANT

A N D THE RENT ASSESSMENT BOARD FOR RESPONDENT/APPELLANT
THE CORPORATE AREA

Rudolph Smellie instructed by Daly, Thwaites, Watson and Campbell
for the applicant/appellant

No appearances for the respondent

June 24 and July 17, 1991

BINGHAM J.A. (AG.)

When this matter came on for hearing before the Court
learned Counsel for the appellant sought leave to abandon the
original grounds filed and to file and argue the following ground:

"1. That the Rent Assessment Board
erred in holding that the limitation
provisions of section 19(A) of the
Rent Restriction Act applied to
Certificate of Assessed Rent or any
order made pursuant to subsection (1)
of section 21 of the said Act which
deals with how increases in rents
may be allowed or restricted."

In advancing his submissions in support of this ground
Mr. Smellie submitted that the Rent Assessment Board in arriving
at its decision in this matter invoked the provision of section 19(A)
(3) of the said Act in ruling that the application made by the
appellant was out of time and denying them a hearing.

Clearly that ruling was wrong; the subsection relating as

it does to objections to matters specified in Certificates of Assessed Rental (Emphasis mine)

Subsection 19)A)(3) provides:

"(3). Where a landlord or tenant objects to any matter specified in the Certificate of Assessed Rent or any order made pursuant to subsection (1) of section 21, he may, within sixty days of the issue of the Certificate or of the making of the order, as the case may be, or such longer time as the Board for a review of the Assessment Officer's decision and section 11 shall apply accordingly."

In contradistinction to this subsection, there is no fixed limitation period in the Act in respect of applications made by an aggrieved person to the Board for a review of a grant or refusal of a Certificate of Exemption by an Assessment Officer.

The question of the procedure in applying for a Certificate of Exemption under section 3 of the Rent Restriction Act and the manner in which the provisions of the Rent Restriction (Public and Commercial Buildings Exemption) Order 1983 falls to be construed were considered by this Court in Virgo Enterprises Limited et al v Newport Holdings Limited and Rent Assessment Officers; C.A. Miscellaneous Appeals 1, 2 and 3 69 (unreported a Court of Appeal decision 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. The Court said (per dictum of Carey J.A) 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."

In relation to applications made by a landlord or tenant to the Board for a review under section 11(A) there is no limitation period for considering such applications. What may be considered as a convenient time for an aggrieved person to apply for a review if affected by such a decision would seem to be that moment in time when as the learned judge said at page 6:

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"The landlord uses his certificate of exemption in a manner inimical to the interest of the tenancy:"

as until that stage is reached (he continued) -

"I do not think the tenant is an aggrieved person entitled to a review by the Board. It is at that point that the law provides a safeguard in the form of a quasi - Judicial Board."

As the Board in refusing to hear the application on its merits sought to do so under the provisions as set out in section 19(2)(3) of the Act, that ruling was misconceived and therefore wrong.

It was for these reasons that we proceeded to quash the decision of the Board and ordered that the matter be remitted for a review by the Rent Assessment Board.

Carey P. (Ag.)

I agree.

Morgan J.H.

I agree