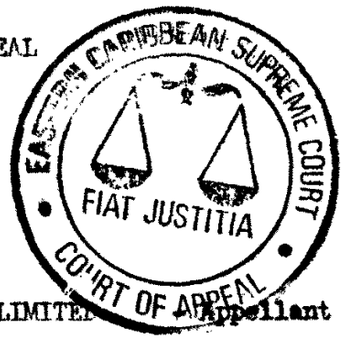
IN THE COURT OF APPEAL



GRENADA

CIVIL APPEAL NO. 1 of 1973.

BETWEEN:

JONAS BROWNE & HUBBARD LIMITED - Appellant

and

THE COLD STORE LIMITED - Respondent

Before: The Honourable the Acting Chief Justice
The Honourable Mr. Justice Peterkin
The Honourable Mr. Justice Berridge

C.W.J. Bristol for the appellant
D.H. Lalsee for the respondent

1974, May 13

JUDGMENT

LEWIS, C.J.

The appellant company is the landlord of the respondent company. Some time in 1972 the respondent company applied to the Rent Restriction Board to determine the standard rent of certain premises which it had rented from the appellant company. The application was heard on April 21, 1972, and the Board reserved its decision, which it delivered in writing on May 4, 1972. The Board declared that the standard rent of the leased premises was $9,000.00 per annum. From this decision the appellant company appealed to the Court of Appeal. When the appeal reached this Court, the Court held that it had no jurisdiction to entertain the appeal because it had been brought to the wrong Court. The Reason why the Court so held was because of the provisions of section 5(4) of the Rent Restriction Ordinance Cap.259. This subsection reads as follows:-

> "An appeal shall lie to the Supreme Court of the Windward Islands and Leeward Islands from any decision of the Board and the procedure in respect of any such appeal shall be such as is laid down

in the Magistrates Judgments (Appeals) Ordinance."

The Supreme Court of the Windward Islands and Leeward Islands to which an appeal originally lay by virtue of this subsection no longer exists and the jurisdiction formerly exercised by that Court is now exercisable by the High Court constituted by the West Indies Associated States Supreme Court Order No.223 of 1967. The effect of section 23 (2) of this Order is that the appellant company should have brought its appeal not to the Court of Appeal but to the High Court of Grenada.

The procedure regulating appeals from the Rent Restriction Board to the High Court of Grenada is that laid down in the aforesaid Magistrates Judgments (Appeals) Ordinance Cap.178. This Ordinance requires a person desirous of appealing to do one of two things: either to give notice of appeal to the prescribed persons at the time of the pronouncement of the judgment against which he wishes to appeal and in addition, within 28 days of the pronouncing of such judgment, to serve the said persons with a notice in writing containing his reasons for appeals, or alternatively to file a notice of appeal within 14 days of the pronouncing of the judgment. This notice of appeal should contain his grounds of appeal and should be served on the prescribed parties. The provisions of the Magistrates Judgments (Appeals) Ordinance when applied to the present case would mean that the appellant company in order to bring its appeal before the High Court of Grenada should either have given notice of its intention to appeal to the Rent Restriction Board and the respondent company on May 4, 1972, and filed its reasons for appeal within 28 days thereafter, or alternatively should have filed a notice of appeal containing its reasons for appeal within 14 days after May 4, 1972. The appellant company, in fact, did neither of these things so its appeal never reached the High Court of Grenada, but was brought to this Court, and by the time this Court dealt with the matter, the time for bringing the appeal to the High Court had expired.

In my view the only course then open to the appellant company was to apply to the High Court for special leave to

appeal under section 13 (1) of the Magistrates Judgments (Appeals) Ordinance, Cap.178, and counsel eventually conceded that that was the application which he made to the High Court. I wish to emphasize the word "eventually" because he at first sought to contend that section 13 (1) of the Magistrates (Judgments (Appeals) Ordinance Cap. 178 had been repealed by section 32 of the West Indies Associated States Supreme Court (Grenada) Act No.17 (1971) and as a consequence that the real application which he had made to the High Court was an application for extension of time within which to appeal under section 32 (2) of this Act and not an application for special leave to appeal under section 13 (1) of Cap.178 .

Section 13 (1) of Cap. 178 reads:-

> "If any person entitled to appeal is unavoidably prevented from so doing in the manner or within the time hereinbefore specified, he may apply to the Court for special leave to appeal."

Section 13 (2) has been repealed but originally read as follows:-

> "On the application the Court may, if satisfied that the applicant was entitled to appeal and that he was unavoidably prevented from so doing as aforesaid, grant leave to appeal on any terms and conditions it thinks just: Provided that no such leave shall be granted unless the opposite party has had an opportunity of being heard on the application and, if the Court thinks fit, of adducing evidence against the granting of the leave."

Section 32 of the West Indies Associated States Supreme Court (Grenada) Act No.17 / 1971 reads:-

> (1) Subject to the provisions of the Magistrates Judgments (Appeals) Ordinance or any other enactment regulating the procedure on appeals from Magistrates' Courts and to rules of court, an appeal shall lie to the Court of Appeal from any judgment, decree, sentence or order of a magistrate in all proceedings.
>
> (2) The time within which notice of appeal may be given or any bond or security entered into or grounds of appeal

filed in relation to appeals under this section may be extended at any time by the Court of Appeal."

In my view the contention that the true application before the High Court was one for extension of time is erroneous for two reasons: (a) Section 32 (1) of Act 17/1971 relates to appeals from magistrates but the proceeding before the High Court related to an appeal from the Rent Restriction Board, and (b) section 32 (2) makes it quite clear that the powers therein contained are to be exercised by the Court of Appeal and not by the High Court. It follows therefore that there was no authority whereby the High Court could have granted the appellant company an extension of time under section 32 (2) of Act 17/1971 in which to file an appeal and accordingly the submission that the true application before the High Court was one for this purpose was misconceived. In my opinion counsel for the appellant company acted correctly when he abandoned this contention and sought to bring his application within the confines of section 13 (1) of Cap. 178. This subsection provides that if any person entitled to appeal is unavoidably prevented from so doing, in the manner and within the time hereinbefore specified, he may apply to the Court for special leave to appeal. "The Court" here means the High Court of Grenada which of course has the necessary jurisdiction in the matter. Obviously, the appellant company was entitled to appeal. This was a right given to it by section 5 (4) of the Rent Restriction Ordinance, Cap.219, but as to the other requirement, that it was unavoidably prevented from appealing, I am by no means satisfied that the appellant company is able to establish this. The appellant company went to the High Court with its application for special leave to appeal, and the High Court dismissed it.

In my view, it is impossible for the appellant company to contend that it was unavoidably prevented from appealing, for the simple reason that it did in fact appeal, but brought its appeal to the wrong Court. Therefore, the plain fact of the matter is that the appellant company made an error in interpreting the law regulating its right to appeal and this mistake of law

cannot be regarded as a circumstance to which section 13 (1) of the Magistrates Judgments (Appeals) Ordinance refers, when it speaks of an appellant being "unavoidably prevented" from appealing. The appellant company could have had its appeal heard had it not made the mistake of misinterpreting the relevant law, and therefore, it was not unavoidably prevented from appealing within the meaning of section 13 (1) of Cap.178.

Section 13 of Cap.178 arose for interpretation in the case of Francis Dain v The Commissioner of Police (Grenada Summons No.1 of 1971). in which an application was made to this Court for extension of time within which to grant leave to appeal; to file reasons for appeal; to enter into recognizances, and to serve notice upon the other side. The applicant had been convicted of two offences by a magistrate and wished to appeal against both convictions, but had filed only one notice of appeal and had entered into only one recognizance in relation to both convictions. He stated in his affidavit in support of his application that he was not aware that he ought to have filed two notices of appeal and to have entered into two recognizances in respect of the two convictions. This Court held that having not observed the requirements of the law it could not entertain his application. A.M. Lewis, CJ., who delivered the judgment of the Court, made it clear that a mistake of law, such as that made by the applicant, did not fall within the meaning of the words "unavoidably prevented from so doing" (i.e. unavoidably prevented from appealing) occuring in section 13 (1) of Cap.178. He said:

> "The Court must, I feel, hold that that ground which is really an allegation of a mistake of law, a mistake as to the proper construction of the legal provision relating to appeals does not fall within provisions of section 13 (2) which require the applicant to show that he was unavoidably prevented from appealing. This being so, the Court, with great regret, is bound to refuse this

great regret, is bound to refuse this application."

Although these words were used in reference to section 13 (2), they also occur in section 13 (1), and in my opinion they exactly cover the circumstances of this case, and I adopt them in their entirety. I am of the opinion that the High Court was right in refusing the appellant company's application for special leave to appeal, and I would dismiss this appeal from its refusal with costs to be taxed.

P. Cecil Lewis
Acting Chief Justice

Peterkin, J.A. (ag.)

I agree with the judgment delivered by learned Acting Chief Justice and I have nothing further to add.

Peterkin, J.A. (ag.)

Berridge, J.A. (ag.)

I agree with the judgment delivered by the learned President, and I have nothing further to add.

Berridge, J.A. (ag.)