IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES

HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2010/0158

IN THE MATTER OF THE RENT RESTRICTION ACT CAP 286 (THE ACT)

AND

IN THE MATTER OF THE RENT RESTRICTION (EXEMPTION) ORDER SRO 6 OF 2008 (THE ORDER)

AND

IN THE MATTER OF A LEASE DATED 1ST NOVEMBER 2005 AND MADE BETWEEN THE APPLICANT AND THE SECOND RESPONDENT (THE LEASE)

BETWEEN:

ANDRE GARVEY

Applicant

and

1. **THE MINISTER RESPONSIBLE FOR HOUSING**
2. **GRENREAL PROPERTY CORPORATION LIMITED**

Respondents

Appearances:

Mr. James Bristol for Applicant
Mr. Raymond Anthony for First Respondent
Mr. Adebayo Olowu for Second Respondent

2010: May 11; June 28;
2011: March 7;
2016: February 25.

RULING

[1] **PRICE FINDLAY, J.:** This is an application for judicial review filed by the applicant, seeking the following relief:

> "The Applicant, Andre Garvey of Springs in the parish of St. George applies against the First Respondent, the Minister Responsible for Housing and the Second Respondent, Grenreal Property Corporation Limited of Melville Street in the city of St. George, for an order of certiorari to remove into this Honourable Court and to quash the Rent Restriction (Exemption) Order SRO 6 of 2008 made by the First Respondent on the 17th December 2007, whereby the First Respondent purported to declare the Second Respondent's premises, as therein mentioned, to be exempted premises in respect of the whole of the Rent Restriction Act."

[2] The facts which form the basis of this application are as follows:

> "1. The applicant was a Tenant of the Second Respondent under and by virtue of a lease dated the 1st November 2005 (the Lease), of Unit No. 103B, being a part of the Second Respondent's premises known as the St. George's Cruise Terminal Building in the City of Saint George, Grenada. There is now produced and shown to me and exhibited herewith and marked "AG1" a true copy of the Lease.
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> 2. The applicant latterly operated a retail shop from the said Unit No. 103B (the Shop), from which he retailed souvenirs and gift items. Most of his business is from the cruise ships.
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> 3. The Shop is part of the premises, the subject matter of the Order.
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> 4. Pursuant to the Lease, the monthly rent was due on the 1st of each month. For the month of March 2010, he was late in payment of rent as a result of the downturn in the economy.

5. On the 24th March 2010 at approximately 10:00 p.m. he was informed by a police officer that the Second Respondent had padlocked the access door to the Shop.

6. On the 25th March 2010 he attended the offices of the Second Respondent and paid rent due for the month of March 2010. He had earlier that day removed the locks placed by the Second Respondent on the doors to the Shop.

7. The rent was accepted by the Second Respondent but while he was at the Second Respondent's offices making the payment, Mr. Hendrik Van Dijk, the senior officer of the Second Respondent, told him that he terminated the Lease and that he needs no legal authority to do so or to padlock him out of the Shop.

8. At about 10:00 p.m. on the 25th March 2010 the Second Respondent once again padlocked the entrance door to the Shop and continued to do so.

9. He received no correspondence whether in writing or otherwise as to the reasons for the Second Respondent's said actions.

10. In the circumstances, he was unable to carry on his business and he suffered grave hardship and financial losses which are unquantifiable."

[3] He further states that after he was locked out of the premises he was informed by his Attorneys that the Rent Restriction (Exemption) Order SRO 6 exempted Grenreal Property Corporation from the provisions of the Rent Restriction Act. He deponed that that was the first time he became aware that the premises he occupied were no longer protected by the Rent Restriction Act.

[4] The applicant seeks relief on the following grounds:

"1. On the 11th May 2010 the Applicant was granted leave to apply for Judicial Review by the Honourable Madam Justice Price Findlay.

2. The Order is ultra vires section 7(1) of the Rent Restriction Act in that it refers to a "particular" premises and not to any "class" of premises and the First Respondent thereby acted in excess of his jurisdiction.
3. The Applicant has been denied the protection afforded him by the Act and in particular that afforded by section 22 of the Act whereby a Court Order is required by the Second Respondent in order to obtain possession.
4. On the 24th March 2010 the Second Respondent locked the Applicant out of the shop and did so again on the 25th March 2010.
5. No alternative form of redress other than Judicial Review is available in these circumstances.
6. The Applicant is personally and directly affected by the Order as the Shop is a part of the premises belonging to the Second Respondent and which premises are the subject of the Order."

[5] In response the First Respondent filed an affidavit on 6th July 2010, stating that the SRO No. 6 of 2008 was not ultra vires the Rent Restriction Act, and stated that a class can comprise of a particular premises and that the said SRO had been regularly and rightly enacted.

[6] They sought to have the application dismissed.

[7] The Second Respondent also filed an affidavit dated 7th July 2010 by Winston Whyte, a director and senior employee of the Second Respondent.

[8] In that affidavit they set out the chronology of events that led to the construction of the building (the subject matter of these proceedings).

[9] The cruise ship terminal and mall building and car park facility are the premises referred to in the said SRO 6 of 2008.

[10] He depones that by virtue of a lease recorded at Liber 9-2009 the Applicant became a tenant of the Second Respondent at unit 103B.

[11] The Applicant was to pay the rent on the first day of each month along with an EC$400.00 per month fee for air conditioning being supplied to his unit.

[12] The Applicant failed to pay the rent as agreed and was written to but he failed and/or refused to comply with the covenant. He also failed to pay the air condition supply charge and was in arrears for several years.

[13] In March 2010 the rent was unpaid for 14 days and the Applicant had failed to pay for the air condition since August 2008. As a result the Second Respondent entered the premises, padlocked the entrance and terminated the tenancy.

[14] The Applicant removed the padlock and re entered the premises. In April 2010, pursuant to an Order of the Court, the Applicant was ordered to pay the Second Respondent the sum of $8,095.75 in two installments. The Applicant tendered two cheques, both of which were dishonoured by the Applicant's bank.

[15] He deponed that the application for judicial review having been filed more than six months after the publication of the Order was contrary to section 2 of the Public Authorities Protection Act, Cap 262 and failed to make disclosure pursuant to CPR Part 56.3 (h).

[16] Further, that the Applicant had made no application to extend time or properly explain the delay in making the said application.

[17] They asked that the application be dismissed.

The Issues

[18] The following are the issues to be addressed:

(i) Whether section 2(a) of the Public Authorities Protection Act Cap 262 applies to judicial review proceedings.

(ii) Whether the court ought to set aside the Order granting leave to apply for judicial review in light of the Second Respondent's allegation that the Applicant was guilty of delay within the meaning of CPR Part 56.5.

(iii) Whether the court order granting leave to apply for judicial review ought to be set aside on the ground that the Applicant failed, as required by CPR Part 56.3(3) (g), to state that the time limit for making the application was barred by the Public Authorities Protection Act Cap 262.

(iv) Whether the premises of the Second Respondent as described in the Order is a class of premises within the meaning of section 7 of the Act.

Whether section 2(a) of the Public Authorities Protection Act Cap 262 applies to Judicial Review Proceedings

[19] Section 2 of the Public Authorities Protection Act Cap 262 provides as follows:

> "2. Where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any statute, or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such statute, duty or authority, the following provisions shall have effect –
>
> (a) The action, prosecution or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect or default complained of, or, in case of a

continuance of injury or damage, within six months next after the ceasing thereof."

[20] I agree with the Second Respondent on this issue that judicial review proceedings do constitute proceedings under the Public Authorities Protection Act and as such the filing of these proceedings some two years after the passage of the SRO 6 of 2008 is out of time.

[21] The judgment of the Court of Appeal in **Quorum Island (BVI) Limited, the Attorney General v Virgin Islands Environmental Council**[1] held that the word "proceeding" must be given the "greatest possible scope" because it includes but was not limited to "cause, action or matter".

[22] The Court in that instance clearly found that an application for leave to apply for judicial review was a proceeding within the meaning of the Public Authorities Protection Act.

[23] The Public Authorities Protection Act in the **Quorum** case is in the same terms as that of the Grenada Act.

[24] Denys Barrow JA stated:

> "It seems clear that "proceeding" is a word of the greatest possible scope because by including action, cause and matter it extends to more than those. The word "action" in the **Supreme Court Act** bears essentially the same meaning as in the **Public Authorities Protection Act** although the meaning in the latter Act is more modern as it does not refer to a writ. The essence of the definition in the latter Act, which is confirmed by looking at the older definition, is that action includes a civil proceeding commenced as a claim under CPR 2000 but, more broadly, it means a civil proceeding commenced in such manner as may be prescribed by rules of court. Action, therefore, does not mean only a claim. It means any civil proceeding, whether or not a 'claim', commenced in a manner that is

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prescribed by rules of court. Returning to the word "proceeding", it hardly matters that the definition quoted above is found in the **Supreme Court Act** and not the **Public Authorities Protection Act**, as Mr. Farara took pains to point out, because the meaning given to it in the former Act is perfectly consistent with its usage in the latter Act and provides valuable assistance by way of an example of its usage in a similar context, including its relationship with the word action.

The significance of the word proceeding in section 2(a) of the Act is that if the appellants are correct in their argument that an action for judicial review is not commenced until the claim form is filed and filing an application for leave does not commence an action, which I do not accept but do not need to explore, the amplitude of that word easily encompasses an application for leave to apply for judicial review. An application to the court is certainly a proceeding. That proceeding is commenced when the application is filed. It cannot matter that the proceeding commences as an application and continues as, or morphs into, a claim. Neither can it matter if the making of the application is not a first stage of, but is rather a condition precedent to, commencing a claim. The proceeding initiated by an applicant for judicial review commences by filing an application for leave. That is a proceeding.

Section 2(a) of the Act does not require that an action be commenced. The section simply requires that where any action or other proceeding is commenced it must be commenced within a specified time. Whether the manner prescribed by rules of court for commencing a civil proceeding is by filing a claim form or a notice of application (or a petition or originating motion or otherwise) is immaterial for purposes of section 2(a). That is an issue of practice and procedure. So far as section 2(a) is concerned whatever is the manner prescribed by rules of court for a person to commence proceedings to obtain the court order that he seeks, the proceeding must commence within the specified time. In this case the proceeding was commenced in time. To my mind, that is the end of the matter."

[25] Having so answered issue (i), issues (ii) and (iii) are moot and I would say no more about them.

Whether the premises of the Second Respondent as described in the Order is a class of premises within the meaning of section 7 of the Rent Restriction Act

[26] Class is not defined in the Rent Restriction Act. Section 7(1) merely provides that the Minister may by Order declare any class of premises specified in the Order to be exempted …

[27] And what is a class? I look to the case of **National Federation of Retail Newsagents Booksellers and Stationers Agreement v Registrar of Restricted and Trade Agreements**[2] and the words of Lord Reid:

> "I must also notice another argument with regard to the word "class". It was said that this word implies some diversity so that a single issue or even all issues of one newspaper could not be a class. But in its ordinary meaning "class" merely means all those things denoted by a particular definition or description. I see no difficulty about a class having only one member: indeed that is frequently the case. It may be that the word "class" is used here simply because if a later agreement or recommendation were made it would not be with regard to the same goods but with regard to goods of the same kind."
>
> "A "class" merely means all things denoted by a particular definition or description, so that a class need have only one member. Therefore, copies of a single newspaper could constitute a class of goods."

[28] I believe that that is a clear statement of the law, and in the case at bar I find that the "tenanted premises" referred to in the SRO is a class that can be referred to by the Minister in the exercise of the discretion given by the Act.

[29] I agree with Counsel for the First Respondent that particular premises in this case suffice as it fits into the class of premises contemplated by the Act.

[30] The Applicant has not demonstrated to the court that the SRO in question was improperly enacted and so the application is dismissed.

[2] [1972] 1 WLR 1162 at pg 1169

[31] I do apologize for the extremely late delivery of this judgment as the file was misplaced and I thought that I had already dealt with the ruling.

[32] My sincere apologies to the parties and to Counsel for any inconvenience which may have resulted from this delay. Mea culpa.

[33] I would make no order as to costs except to myself.

Margaret Price Findlay
High Court Judge