

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 107/2016

**BEFORE: THE HON MR JUSTICE BROOKS JA
THE HON MRS JUSTICE MCDONALD-BISHOP JA
THE HON MISS JUSTICE P WILLIAMS JA**

BETWEEN	ZAVIA MAYNE	APPELLANT
AND	RADHIKA SANKAR ROTHERY	1ST RESPONDENT
AND	NANDCARE PHARMACY LIMITED	2ND RESPONDENT

Philip Bernard and Ms Rishille Brown instructed by Bernard & Co for the appellant

Jalil Dabdoub instructed by Dabdoub Dabdoub & Co for the respondent

14 and 17 March 2017

BROOKS JA

[1] This is an appeal arising from the decision of Tie J refusing an application by Mr Zavia Mayne for summary judgment in a claim that he had brought against Ms Radhika Rothery and Nandcare Pharmacy Limited (the respondents). Mr Mayne is aggrieved by the learned judge's ruling. He wishes for it to be set aside and for summary judgment to be awarded to him.

[2] In the claim, Mr Mayne sought to recover \$3,092,026.50 as representing rental owed by the respondents for commercial premises that he had leased to them or one of them. The respondents' defence to the claim denied owing any rental. The learned judge identified the issues raised in the defence as, (a) who was the party to be damnified by a judgment, and (b) whether the rental charged for years two and three of the lease was in excess of the standard rental and was, therefore, not recoverable. The respondents also counterclaimed against Mr Mayne for loss suffered from the fact that he had failed to provide invoices that were compliant with the provisions of the General Consumption Tax Act.

[3] The learned judge found that there was a conflict as regards the proper defendant to the proceedings, which could only be resolved at a trial. On the issue of the annual increase, she ruled that that issue required an interpretation of the provisions of the Rent Restriction Act and the regulations thereunder. She found that the issues required adjudication because the authorities suggested that Mr Mayne's claim to be entitled to an annual increase in rental was incongruous with the Act. She also found that there was uncertainty as to the sum claimed. She further concluded that the issue raised in relation to the General Consumption Tax Act was "inextricably connected" to the issue of the monthly rental.

[4] Before this court Mr Bernard, on behalf of Mr Mayne, argued that the learned judge was wrong in her assessment of the case before her. In a very interesting argument he contended that the proviso to section 17(1) (at paragraph (b)) of the Rent Restriction Act allows a landlord to increase rental to any amount within the maximum

permitted by a rental agreement which specified a progressive rent. The increase could be imposed even if the standard rental for the premises had not been assessed by an Rent Assessment Officer, and there is no application to an Assessment Officer for assessment of the standard rental. He submitted that the standard rental in such a case was the highest rental provided for by the agreement.

[5] Mr Bernard, on the issue of the sum for which judgment should be entered, argued that that should be a matter for assessment after judgment.

[6] Mr Dabdoub, for the respondents, submitted that Mr Bernard's interpretation was contrary to the provisions of section 18 of the Rent Restriction Act which required every landlord to apply to a Rent Assessment Officer for the determination of the standard rent. He submitted that the section clearly provides that it is only when an application for standard rental is pending before the Rent Assessment Officer, or where the Officer has assessed the standard rental that a landlord may apply the annual increase allowed by the relevant regulation made under the Act. Mr Dabdoub argued that Mr Bernard's interpretation of the proviso, at paragraph (b), to section 17(1) of the Rent Restriction Act would turn the rest of the statute "on its head".

[7] Section 17(1) states as follows:

"Subject to subsection (2), until the standard rent of any premises in relation to any category of letting has been determined by an Assessment Officer under section 19, the standard rent of the premises in relation to that category of letting shall be the rent at which they were let in the same category of letting on the 1st day of July, 1976, plus any increases sanctioned pursuant to this Act or, where the premises were not so let on that date, rent at which they

were last so let before that date plus such increases as aforesaid, or, in the case of premises first so let after that date, the rent at which they were, or are, first so let, plus such increases as aforesaid:

Provided that –

- (a) premises shall not, for the purposes of this section, be regarded as having been let in the same category of letting on or before the 1st day of July, 1976, if they were so let under a tenancy agreement or lease providing for a progressive rent;
- (b) **in the case of premises let at a progressive rent payable under a tenancy agreement or lease the standard rent shall, until the tenancy is determined, be the maximum rent payable under the tenancy agreement or lease;**
- (c) ...” (Emphasis supplied)

Section 17(2) is not relevant for these purposes.

[8] Whereas Mr Bernard relied heavily on the highlighted portion of section 17(1), Mr Dabdoub stressed the fact that section 18 rendered it illegal for a landlord to fail to apply for the assessment by a Rent Assessment Officer. Section 18 states, in part:

“The landlord of any premises to which this Act applies, and which is, at the 5th of April, 1983, subject to a contract of tenancy shall, within such time as the Minister may specify by order published in the *Gazette*, apply to the Assessment Officer in the prescribed form for a determination of the standard rent of the premises.

(2) Subject to subsection (6), any person proposing to let premises to which this Act applies, shall, before letting the premises or as soon as possible thereafter, apply to the Assessment Officer to have the standard rent determined and shall disclose to the Assessment Officer the terms and conditions of the letting or proposed letting and all the

circumstances which will affect the standard rent of the premises.

...

(8) Any person who fails to comply with the provisions of subsection (1) or (2) is guilty of an offence against this Act and on summary conviction thereof in a Resident Magistrate's Court shall be liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months." (Emphasis supplied)

Subsection (6) of section 18 (which is mentioned in the above quotation), is not relevant for these purposes.

[9] Separate and apart from the issues in law raised by learned counsel in respect of the interpretation of the relevant provisions of the Rent Restriction Act, we are of the view that the learned judge was correct in her assessment that there are issues to be tried. Evidence is required as to the sum in which Mr Mayne required summary judgment. It was unclear, before her, in what figure Mr Mayne sought summary judgment. Mr Bernard's submission that it should be a matter of assessment cannot be accepted, considering that the claim is for a liquidated sum.

[10] In addition to the above points, the issue of the party against whom the judgment should be granted was also an issue to be settled by an assessment of the contested evidence on the point.

[11] All these issues require a trial. When they have been tried and the various issues as to the Act reviewed in accordance with those issues, is when, if needs be, the questions which arise should come before this court.

[12] There was also raised, in argument before us, the question of whether the document embodying the lease agreement should have been stamped in accordance with the requirements of the Stamp Duty Act. It appears, based on the authority of section 36 of the Stamp Duty Act, and the interpretation given to it by this court in its decision in **Garth Dyche v Juliet Richards and Another** [2014] JMCA Civ 23, that the document ought to have been stamped before it was admitted into evidence. The fact that a judge of the Supreme Court, in **Marjorie Brown-Young v Laddy Vernon Anderson** (1984) 21 JLR 348, admitted a document into evidence without requiring it to be stamped, cannot bind future tribunals faced with the issue of the admissibility of an unstamped document.

[13] The learned judge had a discretion in determining whether the issues raised before her required a trial. We cannot say that she erred in ruling that they required a trial. This court will not, therefore, disturb her ruling.

[14] For these reasons the appeal must be dismissed, the matter set for trial in the Supreme Court and the respondents awarded the costs of the appeal.

MCDONALD-BISHOP JA

[15] I have read, in draft, the judgment of Brooks JA. I agree with his reasoning and conclusion and have nothing that I can usefully add.

P WILLIAMS JA

[16] I too have read the draft judgment of Brooks JA and agree with his reasoning and conclusion. I have nothing to add.

BROOKS JA

ORDER

- a. The appeal is dismissed.

- b. Costs to the respondents to be agreed or taxed.