

JAMAICA

IN THE COURT OF APPEAL

MISCELLANEOUS APPEAL NO. M5/90

BEFORE: THE HON. MR. JUSTICE ROWE, P.  
THE HON. MR. JUSTICE DOWNER, J.A.  
THE HON. MRS. JUSTICE MORGAN, J.A.

BETWEEN                    LUCILLE BRODBER                    APPELLANT  
AND                    THE REAL ESTATE BOARD                    RESPONDENT

Richard Small and Mrs. Sandra Minott-Phillips  
for the appellant

Dr. Lloyd Barnett for the respondent

March 7 and 22, 1991

MORGAN, J.A.:

Mrs. Lucille Brodber is a quantity Surveyor, a founding director of Clyber Real Estate since 1960, has done a three-year course in Building Construction but she has not been able to have her application to the Real Estate Board for registration as a real estate dealer, as filed, granted. The Board has refused it on the ground -

"That the applicant was not involved 'whole time' continuously in the practice of real estate business for two years prior to the coming into operation of the Act." AND "took into consideration the fact that she did not possess any of the prescribed qualifications for registration as a real estate dealer stated in Regulation 10 of the Real Estate (Dealers and Developers) regulations."

She now appeals and seeks an Order directing the Real Estate Board (hereinafter called the Board) to approve the

registration or remit it for re-consideration.

Two grounds of appeal were filed but Ground 2 was not argued. Ground 1 states:

"1. That the Real Estate Board erred in not approving the registration of the appellant as a real estate dealer in that:

- (a) At the time of considering the Appellant's application the Board had already approved the registration of CLYBER LIMITED, a limited liability company, as a real estate dealer. At all material times the Appellant was a director of the said company and therefore the Board would have already determined that the applicant possessed the prescribed qualifications for registration as a real estate dealer.
- (b) In coming to its decision the Board failed and/or neglected to give consideration to the Appellant's ability and experience in the practice of real estate business as is required by section 48(2) of the Real Estate (Dealers and Developers) Act, 1988.
- (c) The Board in coming to its decision construed its powers under section 48(2) of the Real Estate (Dealers and Developers) Act, 1988 as being governed by the provisions of section 48(1) of the said Act.
- (d) Alternatively to (b) and (c) above, the Board failed to ascribe the correct

meaning to the words 'whole time' as they appear in section 48(1) of the Real Estate (Dealers and Developers) Act, 1988, in that the Board interpreted the words 'whole time' in the section to mean 'exclusively' instead of to mean 'approximately 3 hours per day'."

Mr. Small for the appellant elected to treat this ground of appeal on two bases:

- (1) Whether by law the Board is required to satisfy itself that all directors of a corporate body possess the prescribed qualifications for registration before grant to a corporate body.
- (2) Whether the Board correctly approached determination of the meaning of the term "whole time" in section 48.

The business of real estate had flourished over the years but the time came when the Government thought it fit to have it regulated. As a result, an Act came into effect on the 1st September, 1988, cited as the Real Estate (Dealers and Developers) Act, 1987, with the preamble -

An Act to make provision for the licensing, regulation and control of persons engaged as dealers or salesmen in real estate dealings; the regulation of dealings in land in development schemes; and for matters related thereto or connected therewith.

Section 13 enables a person to make an application for registration in one of two categories - a "dealer" or a "salesman".

The relevant definition in section 2 of the Act reads:

Real Estate dealer means -

(b) an individual who is

(1) .....

- (ii) a director or officer of a corporate body which itself engages on its own account in the practice of real estate business.

Real estate dealer means -

An individual who engages in the practice of real estate business in whole or in part, as an agent of, or subject to the direction, control or management of a real estate dealer.

Section 14 states the bases on which the board determines the application. The board must be satisfied "that the applicant is not disqualified for registration under section 21". As the appellant was the director of a real estate company, the interpretation of this section in respect of a corporate body is relevant to this appeal and it may best be dealt with now.

The relevant part of the section (21(i)) states that a corporate body shall not be qualified for registration as a real estate dealer - ((i - iii) not relevant)

"(b) (iv) if at least one of its directors do not possess the prescribed qualifications for registration; or

(v) any of its directors are otherwise disqualified for registration, as individuals under paragraph (a)."

Mr. Small's submission was that the true interpretation of this section is that, unless all the directors of the company possess the prescribed qualifications for registration, a body corporate shall not be qualified for registration as a real estate dealer. He prayed in aid the penal section 45(1) which states the penalty for -

"Every person who becomes or acts as a director or principal officer of a company holding a licence as a real estate dealer who is himself disqualified from registration ..."

and he concluded that the Board holds a similar interpretation as he does because it had set out in a letter to the applicant the following:

"Section 21 sets out the disqualifications. It is important to note that apart from the other disqualifications set out, an individual is disqualified if he does not possess the prescribed qualifications for registration, and a body corporate (eg. a company) is disqualified if at least one of its directors does not possess the prescribed qualifications."  
[Emphasis mine]

He says together this means that, unless every director possesses the prescribed qualifications for registration the body corporate shall not be qualified for registration.

On this basis, he argued that as Mrs. Brodber was a director of a company which was granted a licence as a real estate dealer, in granting the company's application, the Board must have satisfied itself that every one of its directors had the prescribed qualifications, and, on that basis, she was entitled to a licence. In his submission the Board is, therefore, estopped from refusing a grant of licence to her. He submitted further that, in considering the appellant's application for registration, the Board had a duty to ensure that by their acts she was not induced to commit a criminal offence under section 45(1). Not to be so caught, she had resigned as a director of the company.

It is my view that section 21 (supra), on which Mr. Small relied, is clumsily drafted and, by the use of double negatives, can lead to confusion. In construing the

section, however, if both negatives are eliminated the true construction is evident and the section will appear to read:

A person shall .... be qualified  
for registration as a real estate  
dealer if -

in the case of a body ~~corpo-~~  
rate -

at least one of its  
directors do ....  
possess the prescribed  
qualifications for  
registration.

This is a clear interpretation and it therefore means that provided one of the directors of a company possesses the statutory qualification for registration, that company can be registered as a real estate dealer. Contrary to the submissions of Mr. Small, ALL the directors are not required to have the statutory qualifications and consequently the question of estoppel would not arise when, having granted the application of Clyber Limited, the Board came to give consideration to the applicant's qualification.

Section 45 of the Act speaks prospectively and does not penalize a person who was a director of a real estate company prior to the commencement of the Act merely because he or she remains a director of that company. New directors must be qualified under the Act and existing directors, who propose to actively participate in the company's business, must similarly qualify. This section does not assist in the interpretation of section 21 of the Act. The applicant elected to apply as an individual for registration as a real estate salesman and had then to wrestle with the interpretation of the word "whole-time" as set out in section 46.

It is useful at this stage to set out the facts. In brief the facts are that on the 25th October, 1986, Mrs. Brodber made an application to the Board for registration

as a real estate salesman. By letter dated 9th October, 1989, she was informed by the Board that it was not satisfied that she qualified under section 48 of the Act (Transitional) and invited her, if she wished, to come in and be heard. As a result, she attended on the Board with her attorney and was heard on June 7, 1990. On that date she requested and was granted permission to amend her application by substituting "real estate dealer" for "real estate salesman". At the end of the hearing she was orally informed that she was not qualified for registration as a dealer under section 48 - she was not considered to be a person engaged "whole-time" in the practice of real estate for a continuous period of two years immediately prior to the date of commencement of the Act.

Section 48 is a transitional section commonly called the "grandfather" section and reads as is relevant:

"Notwithstanding anything in this Act, a person who immediately before the date of commencement of this Act was engaged 'whole time' in the practice of real estate business as a real estate dealer or a real estate salesman for a continuous period of two years before such date, shall if he has applied for registration within 60 days of the date of commencement of this Act be entitled to continue such practice without being registered or granted a licence under the Act." (Emphasis mine)

It is a canon of construction of statutes that "words are construed in their popular sense" and the presumption is that words in statutes are used precisely and exactly, not loosely or inexactly (per Lord Hewart).

Lord Hewart, C.J. in Spillers Ltd. v. Cardiff (Borough) Assessment Committee (1931) 2 K.B. 21 at page 43 said:

"It ought to be the rule and we are glad to think that it is the rule that words are used in an Act of Parliament correctly and exactly and not loosely and inexactly. Upon those who assert that the rule has been broken the burden of establishing their proposition lies heavily and they can discharge it only by pointing to something in the context which goes to show that the loose and inexact meaning must be preferred."

In Collins English Dictionary the word "whole" means "complete, entire". The Concise Oxford Dictionary "whole" means "not broken, intact". New Webster's - "entire, complete, intact, all, total, not a fraction".

Mrs. Brodber deponed and it is also reported in the extract of the Minutes of the Board, attached to the bundle, that during the relevant period, 1985 to 1988, she worked as a salesperson while operating her own business as a professional Quantity Surveyor spending "fourteen hours equally between the two pursuits". This clearly indicated that they were two business entities with which she shared her time and, though these occupations or professions may be compatible with each other, her participation in them simultaneously is evidence that she was not engaged completely, entirely and whole-time in the business of real estate.

The preamble to the Act clearly supported Dr. Barnett's submission that section 48 was intended to facilitate those who, up to two years before the coming into operation of the Act, depended wholly on the practice of real estate for a living whether or not they were academically qualified persons. Because they could not be immediately entitled, a transitional provision or escape clause allowed applications to be made within sixty days of the coming into effect of the Act to enable those persons to



continue the business until their applications could be determined by the Board.

Mr. Small would have the word "whole-time" given a special meaning, that is, "full time" and submitted that eight hours being the normal work day, "full time" and "whole-time" should be given the same meaning. But the word in the Act is "precise" and it is not the business of the Court to re-write legislation or subvert the intention of the legislature.

I would order that the appeal be dismissed, with costs to the respondent.

ROWE, P.:

I concur.

DOWNER, J.A.:

I concur.