

33/82

IN THE PRIVY COUNCIL

No. 46 of 1981

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O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

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B E T W E E N :

GLORIA MORALES (Complainant) Appellant

- and -

LUCILLE BIRCHWOOD (Defendant) Respondent

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RECORD OF PROCEEDINGS

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Osmond Gaunt & Rose,  
Furnival House,  
14/18 High Holborn,  
London WC1V 6BX.

Solicitors for the Appellant

## O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

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- and -

LUCILLE BIRCHWOOD (Defendant) Respondent

## RECORD OF PROCEEDINGS

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O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :

GLORIA MORALES (Complainant) Appellant

- and -

LUCILLE BIRCHWOOD (Defendant) Respondent

RECORD OF PROCEEDINGS

No. 1

Ejectment Complaint - 7th May 1979

In the  
Scarborough  
Magistrates  
Court

OFFICIAL RECEIPT

1208/79

A No. 114561

No. 1  
Ejectment  
Complaint  
7th May 1979  
(part)

EJECTMENT COMPLAINT

(Summary Ejectment Ordinance, Ch.27 No.17)

GLORIA MORALES - Milford Road Complainant

LUCILLE BIRCHWOOD - Lambeau Defendant

The complaint of Gloria Morales made before me the undersigned Stipendiary JP for the Tobago District who saith that the said Gloria Morales did let to Lucille Birchwood a Tenement consisting a building situate at Carrington Street for commercial purposes at a rent of \$55.00 per month under the rent of \$1200.00 per annum and that the said Tenancy expired on the 28th day of Feb. 1979 by notice to quit given by the said Gloria Morales on the 31st day of Jan. 1979 and that the said Lucille Birchwood refuses to deliver up possession of the said Tenement, and still detains the same although she hath been required to deliver up the possession thereof.

Sgd. G. Morales

1) Premises decontrolled Signature of Complainant

In the  
Scarborough  
Magistrates  
Court

Dated this 7th day of May 1979

Sgd. John Griffith  
JUSTICE OF THE PEACE

No. 1  
Complainant  
7th May 1979  
(cont'd)

FEE RECEIVED: SEVENTY-TWO CENTS  
21-5-79

No. 2  
Magistrates  
Notes of  
Complainants  
Evidence  
15th October  
1979

No. 2  
Magistrates Notes of Complainants  
Evidence - 15th October, 1979

SCARBOROUGH MAGISTRATE'S COURT  
MONDAY 15TH OCTOBER, 1979  
BEFORE HIS WORSHIP  
H. BRUCE, ESQ.,  
SENIOR MAGISTRATE T & T

10

1208/79 Mr. Benjamin for Defendant  
Mr. Julien for Complainant

Both sides ready; stood down.

1208/79

GLORIA MORALES SWORN STATES:

My name is Gloria Morales. I live at  
Milford Road, Scarborough. I am the Executrix of  
the Estate of Abraham Morales the deceased. He  
was my father and died on 21st September, 1959.  
He was the owner of commercial premises situate  
at Carrington Street, Scarborough, now tenanted  
by the defendant. Her tenancy is monthly. It  
starts at the first of the month and ends at the  
end of the month. These are commercial premises.  
They were assessed by the Rent Assessment Board  
on 8th Jun, 1978 at \$55.00 per month. I have a  
certified copy of the Assessment. This is the  
certified copy. (Put in and marked G.M.I.)  
(Defence Counsel shown certified copy.) She is  
paying this \$55.00 per month from 1972 to date.  
She is not owing me any rent. I gave her a  
notice to quit on 31st January, 1979. (Witness  
shown document.) This is a copy of the original.  
(Defence Counsel shown document.) (Put in and

20

30

marked G.M.2.) I served it at her residence at Lambeau at 8.55 am on her personally in the presence of my brother, Richard Morales. It was a month's notice requesting her to quit at the end of the month. I laid a complaint of ejectment in the Summary Ordinance against her to deliver up possession to me. She has failed to give up possession. I am asking the Court to give an order or not to give up possession of the premises.

In the  
Scarborough  
Magistrates  
Court

No. 2  
Magistrates  
Notes of  
Complainants  
Evidence  
15th October  
1979  
(cont'd)

10

Under cross examination:

She was a tenant of the premises after the death of her husband in the 1960's. Her husband became tenant of those premises in 1949. His rental was \$40.00 per month. It continued until I raised it to \$55.00 by mutual consent. I did tell her I was increasing the rent to \$55.00. That was approximately 1972. I have not got the receipt book with me to show where I increased the rent to \$55.00. I have not got it with me because it is not necessary. I have brought Miss Birchwood to Court already trying to get possession but the case was struck out for non-appearance of my Counsel. I brought her to Court once before. I (Mr. Julien objects on the grounds that this line of cross examination is irrelevant because there is the certified copy stamped by the Rent Board.) (Objection overruled.)

20

Continued:

These premises were always used as commercial premises. The first rent and that continuing right into the 1970's was \$40.00 per month.

30

CASE FOR COMPLAINANT CLOSED

No. 3

Magistrates Notes of Submissions - 15th  
October 1979

No. 3

Magistrates  
Notes of  
Submissions  
15th October  
1979

Submission by Mr. Benjamin:

There is no case for the defendant to answer. There is a presumption all buildings in the countries come under the provision of the Rent Restriction Ordinance. Ordinance 84. (Just putting in the certified copy of the Rent Assessment Board is not exclude the exigency of the rent.)

40

In the  
Scarborough  
Magistrates  
Court

No. 3  
Magistrates  
Notes of  
Submissions  
15th October  
1979  
(cont'd)

Submission by Mr. Julien:

These proceedings were brought under Section 3 Chapter 27 No. 17 which is amended by Ordinance 2 of 1964. Giving the Magistrate jurisdiction to order of possession of premises where the rental is \$100.00 or less. These premises the rental of which was fixed by the Rent Assessment Board is \$55.00. All that is required by Section 3 of the Summary Ejectment Ordinance is a determination of the tenancy by proper notice to quit. This has been done in this case. The rent Restriction Ordinance Chapter 27 No. 18 Sec. 14(i)(d) quoted. The Governor in Council. The first exclusion of premises order was made on 9th February, 1954. This is irrelevant to this case; 2nd made on 31st January, 1964 irrelevant; 3rd made on 12th January, 1967 irrelevant. 4th on 16th January, 1969 is relevant to this case. It became effective on 12th June, 1970. The date relevant to this case not 12th June, 1970. The Rent Assessment Board having fixed the Standard Rent at \$55.00 per month excluded these premises whose rental does not exceed \$55.00 per month are not longer under the Rent Restriction Ordinance. The certified copy produced is the Standard Rent fixed by the board to \$55.00 per month on 8th June, 1978.

10

20

Submission by Mr Benjamin:

Sec. 7 of Rent Restriction Ordinance Chapter 7 No. 18. The Standard Rent on 12th June, 1970 is the rent that was first let which is \$40.00.

30

Recent case of Faustin and A.G.

No Landlord could come and raise the rent after the premises are decontrolled. Section 3 does not decontrol any premises. Section 14 of Rent Restriction Ordinance. The notice did not say on the appointed date or thereafter. They have not come under the Ordinance and this complaint should be dismissed.

Mr. Julien:

The standard rent fixed by the Board is what we are to deal with which is the 8th June, 1978.

40

Adjourned 1.11.79 for Court's decision.

Sgd. H.A. Bruce  
Senior Magistrate  
Tobago  
15/10/79

SCARBOROUGH MAGISTRATE'S COURT  
THURSDAY 1ST NOVEMBER, 1979  
BEFORE HIS WORSHIP  
H. BRUCE, ESQ.,  
SENIOR MAGISTRATE T & T

1208/79 part heard:

10 Submission by Mr. Julien:

In support of submission made before I will like to add: interpretation Act 2/62, Sec. 29 Sub.Sec. (i) as well as Sub Sec. 2.

20 You will have to construe the same case for 1979 as if it was in 1969. Exclusion of premises Ordinance 1969 decontrol premises in action on the date the Standard Rent was fixed on 8th June, 1978. I agree 1970 premises was controlled by 1969 order because the rental was \$40.00. They became decontrol the moment the standard rent was fixed on 8th June, 1978 by exclusion of premises order 1969. Enactment is always speaking. It isn't static, Your Worship, jurisdiction under the Rent Restriction Ordinance no longer applies. It leaves you only with the jurisdiction under Section 3 of Summary Ejectment Ordinance. Shudeen vs. Rajack reported in 1959 No. 1 West Indian Report page 349. Some of the diction there could be helpful under your jurisdiction under Sec. 3 of the Summary Ejectment Ordinance.

30

Submission by Mr Benjamin:

40 If the premises is excluded on the Rent Restriction Ordinance it comes under Section 3 of the Summary Ejectment Ordinance. Government Notice 1960, 1979, 1959 is under the Enactment Act. Government Notice 1969 is whether a prospective or reprehensive enactment. It confines itself to one day. If the premises is on or above a certain sum the premises became decontrolled on that day. The date you are hearing this matter is irrelevant. Sub Sec. II of Sec.29. The expression now and next or hereafter in 1970; the Act if it had now, next, hereafter or herebefore would mean now and not sometime after.

In the  
Scarborough  
Magistrates  
Court

No. 4  
Magistrates  
Notes of  
Submissions  
1st November  
1979  
(cont'd)

If the standard Rent before is fixed by the Rent Assessment Board is not a Provisional Rent. Sec. 7 until the rent is fixed by the Board under Section 9 the Standard Rent of letting is same as .... Provisional Rent is rent fixed by the Board for one person. Section 8. Provisional Rent is rent fixed by the Board for one person. Section 8. Provisional Rent is a rent fixed by the Board. Provisional Standard Rent is a rent fixed by the Board before place. Standard Rent is the rent let before it is fixed by the Board. Contractol Rent within Sec. 7 is Standard Rent. The Standard Rent was \$40.00; the Rent Assessment Board increased the Standard Rent in 1978 but that is not prospective.

10

Part heard. Adjourned 15.11.79 facts ruling re no case submission.

Sgd. H.A. Bruce  
Senior Magistrate  
Tobago  
1.11.79

20

No. 5

Magistrates  
Order - 15th  
November 1979

No. 5

Magistrates Order - 15th November 1979

TRINIDAD AND TOBAGO

1208/79

TOBAGO  
SCARBOROUGH MAGISTRATE'S  
COURT

ORDER OF DISMISSAL OF COMPLAINT OR INFORMATION  
(Sec. 63 & 64, Cap. 24)

COUNTY OF TOBAGO

30

GLORIA MORALES

COMPLAINANT

VERSUS

LUCILLE BIRCHWOOD

DEFENDANT

GLORIA MORALES having made a complaint that the said Gloria Morales did let to Lucille Birchwood a Tenement consisting of a building situate at Carrington Street for commercial purposes at a rent of \$55.00 per month under the rent of \$1200.00 per annum and that the said Tenancy expired on the 28th day of February, 1979 by notice to quit given by the said Gloria Morales on the 31st day of January, 1979 and that the said

40

Lucille Birchwood refuses to deliver up possession of the said Tenement, and still detains the same although she hath been required to deliver up the possession thereof.

In the  
Scarborough  
Magistrates  
Court

10 And both the said parties having appeared before the said Court in order that it should hear and determine the said complaint whereupon the matter of the said complaint being by the said Court duly considered it manifestly appears to the said Court that the said complaint is not proved. The Court therefore dismisses the complaint.

No. 5  
Magistrates  
Order - 15th  
November 1979  
(cont'd)

Dated this 15th day of November, 1979.

Sgd. H.A. Bruce  
Hugh A. Bruce  
Senior Magistrate  
Tobago

DISMISSED

No. 6

20 Notice and Grounds of Appeal - 15th  
November 1979

No. 6

Notice and  
Grounds of  
Appeal - 15th  
November 1979

TOBAGO. IN THE MAGISTRATE'S COURT, SCARBOROUGH,  
TOBAGO.

BETWEEN

GLORIA MORALES, Executrix of Abraham Morales,  
deceased Appellant

And

LUCILLE BIRCHWOOD

Respondent

DATE STAMPED 15 NOV 1979

30 NOTICE AND GROUNDS OF APPEAL

To: John Griffith Esq.,  
Clerk of the Court, Scarborough, Tobago

40 TAKE NOTICE that I, Gloria Morales, the Executrix of Abraham Morales deceased, aggrieved by the refusal of Hugh Bruce Esq., Senior Magistrate of the Magistracy, in the Island of Tobago, to make an order for possession upon a complaint made by me under Section 3 of the Summary Ejectment Ordinance Ch.27 No. 17 (as amended by No. 2 of 1964) bearing date the 7th day of May 1979, wherein Lucille Birchwood (the tenant) was charged by me (her Landlord) with failing to deliver up

In the  
Scarborough  
Magistrates  
Court

No. 6  
Notice and  
Grounds of  
Appeal -  
15th  
November  
1979  
(cont'd)

possession to me of certain commercial premises situated at Scarborough, Tobago, (rented from me, the standard rent of which was fixed at \$55.00 per month by the Rent Assessment Board, as from the 8th June 1978) after the tenancy had been duly determined by a legal notice to quit, appeal against such refusal on the part of the learned Magistrate, on the following grounds:

1. That the Court refused to make an order for possession. 10

2. That the decision of the learned Magistrate that the Rent Restriction (Exclusion of Premises) Order, 1969 was inapplicable to the present case for the reason that the rent of the premises on the appointed day (12/6/70) was \$40.00 a month, is erroneous in point of law.

3. The learned Magistrate was wrong in law in holding:

(a) that the premises were not decontrolled; and therefore 20

(b) the tenant was protected under the Rent Restriction Ordinance.

4. The learned Magistrate was wrong in law in rejecting the submission that, by sections 29(1) and 2, of the Interpretation Act No. 2 of 1962, the law is always speaking, and therefore the true construction of the law was as it existed at the date of hearing, and not on the appointed date (12/6/70) so that the Rent Restriction (Exclusion of Premises) Order 1969 was applicable to these premises as from the date the standard rent was fixed (8.6.78) when they became decontrolled thereby ousting the jurisdiction of the Magistrate under sec. 19(1) of the Rent Restriction Ordinance on the day of hearing but leaving him with his jurisdiction under sec. 3 of the Summary Ejectment Ordinance to make an order for possession. 30

Dated this 15th day of November 1979.

Sgd. Gloria Morales  
Executrix & Legal Personal  
Representative of Abraham  
Morales, deceased. 40

Appellant.

Sgd. T.I. Julien  
Appellant's Solicitor.

Appeal received  
Illegible

I hereby apply for a free copy of the Notes of Evidence and Exhibits and the Reasons of the learned Magistrate.

Illegible

Sgd. Gloria Morales  
Executrix & Legal Personal  
Representative of Abraham  
Morales, deceased.

Appellant.

In the  
Scarborough  
Magistrates  
Court

No. 6  
Notice and  
Grounds of  
Appeal - 15th  
November 1979  
(cont'd)

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No. 7

Magistrates Reasons - Undated

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No. 7

Magistrates  
Reasons -  
Undated

GLORIA MORALES

APPELLANT-COMPLAINANT

versus

LUCILLE BIRCHWOOD

RESPONDENT-DEFENDANT

MAGISTRATE'S REASONS

20 Gloria Morales (hereinafter called "the complainant") brought an ejection complaint against Lucille Birchwood, (hereinafter called "the defendant") saying that the said complainant did let to the defendant a tenement consisting of a building situate at Carrington Street for commercial purposes at a rent of \$55.00 per month and that the said Tenancy expired on the 28th February, 1979, by notice to quit given by the said complainant on 31st January, 1979 and that the said defendant refuses to deliver up possession of the said Tenement, and still detains the same although she hath been required to  
30 deliver up the possession thereof.

The complainant, who had no witnesses, gave her testimony, after which the case for the complainant was closed. (See pages 3 and 4 of the Notes of Evidence). And at the close of the complainant's case Counsel for the defendant submitted that there was no case for the defendant to answer. Solicitor for the complainant then replied. (See pages 4, 5, and 6 of the Notes of Evidence).

40 Solicitor for the complainant submitted that when the Rent Assessment Board fixed the standard

In the  
Scarborough  
Magistrates  
Court

No. 7  
Magistrates  
Reasons -  
Undated  
(cont'd)

rent of the said premises at \$55.00 per month on the 8th June, 1978 (see exhibit GMi) the said premises were excluded from the operation of the Rent Restriction Ordinance by virtue of the Rent Restriction (Exclusion of Premises) Order 1969 made under section 4 of the Rent Restriction Ordinance. Paragraphs 3 and 4 of that Order reads as follows:-

3. "There shall be excluded from the operation of the Ordinance with effect from the dates respectively specified in paragraph 4 in relation thereto the following classes of premises 10

(c) all public and commercial buildings, the standard rent of which on the appointed date is or exceeds the rate of Six hundred dollars (\$600.00), per annum.

4. The provisions of paragraph 3 shall have effect - 20

(b) in relation to the class of premises described in sub-paragraphs (b) and (c) on the 12th June, 1970".

Now the evidence of the complainant is that the premises in question were rented from 1979 to 'approximately' 1972 for \$40.00 per month. So that the inference can be drawn that the rent on the 12th February, 1954 and on the 12th June, 1970 was \$40.00 per month. And I so found.

Section 7 of the Rent Restriction Ordinance defines "Standard rent" as follows:- 30

"Until the standard rent of any premises in relation to any category of letting has been determined by the Board under section 9, 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 prescribed date or, where the premises were not so let on that date, the rent at which they were last so let before that date, or, in the case of premises first so let after the prescribed date, the rent at which they were, or are hereafter, first so let." 40

The prescribed date is the 12th February, 1954. So that the standard rent of the said premises on the 12th June, 1970 would be the rent at which the said premises were let on the 12th

February, 1954, that is, \$40.00 per month.

Therefore, the Rent Restriction (Exclusion of Premises) Order 1969 did not exclude the said premises from the operation of the Rent Restriction Ordinance. And the complainant's testimony does not disclose any of the grounds specified in section 14 of the Rent Restriction Ordinance on which an order for possession may be made.

In the  
Scarborough  
Magistrates  
Court

No. 7  
Magistrates  
Reasons -  
Undated  
(cont'd)

10

Consequently, I found that a prima facie case had not been made out by the complainant and I therefore dismissed the matter without calling on the defendant.

Sgd. H.A. Bruce  
H.A. Bruce  
Senior Magistrate, Tobago

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No. 8

Certificate of the Clerk of the Peace  
9th April 1980

No. 8

Certificate  
of the  
Clerk of  
the Peace  
9th April  
1980

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CERTIFICATE OF THE CLERK OF THE PEACE

I, the Undersigned Clerk of the Peace, Tobago do hereby certify that the foregoing pages contain a true and correct copy of the notes of evidence and proceedings taken in the matter of Case No. 1208/79 re:

GLORIA MORALES

COMPLAINANT

VERSUS

LUCILLE BIRCHWOOD

DEFENDANT

30

which was determined on the 15th day of November, 1979 at the Scarborough Magistrate's Court Before His Worship Hugh Bruce, Esq, Senior Magistrate, Tobago.

Dated this 9th day of April 1980

Sgd. ?  
CLERK OF THE PEACE, TOBAGO

In the Court  
of Appeal

No. 9

Order on Appeal - 5th May 1981

No. 9  
Order on  
Appeal - 5th  
May 1981

GLORIA MORALES

Appellant/Complainant

No. 102 of 1980  
No. 1208 of 1979

TRINIDAD AND TOBAGO

DATE STAMPED 7 MAY 1981

ORDER ON APPEAL

(Judicature Ordinance, Ch.3.No.1)

At a Sitting of the Court of Appeal held at  
the City of Port-of-Spain on the 5th day of May,  
1981 GLORIA MORALES of Milford Road, Tobago  
appeared and through Counsel prosecuted her appeal  
against an Order of dismissal under the hand of  
His Worship Hugh A. Bruce Esq., Magistrate of  
Scarborough, Tobago stated and made on the 15th  
day of November, 1979 or that the said Gloria  
Morales, having made a complaint that she did let  
to Lucille Birchwood a tenement consisting of a  
building situate at Carrington Street for  
commercial purposes, at a rent of \$55.00 per month,  
under the rent of \$200.00 per annum, and that the  
said tenancy expired on the 28th day of February,  
1979, by notice to quit given by the said Gloria  
Morales on the 31st day of January, 1979, and  
that the said Lucille Birchwood refuses to deliver  
up possession of the said Tenement and still detains  
the same, although she hath been required to  
deliver up possession thereof, and by which said  
order the said Magistrate dismissed the said  
Complaint.

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20

30

Now, therefore, at the said Court so holden  
as aforesaid upon hearing of the said Appeal, it  
is considered and adjudged by the said Court that  
the said Order of dismissal be, and the same are  
hereby in all things affirmed. And also that the  
said Gloria Morales do pay to Lucille Birchwood  
the respondent in the said Appeal the amount of  
the costs sustained by the said Lucille Birchwood  
agreed at \$100.80 and by her incurred by reason of  
the said Appeal to be paid forthwith after taxation  
which said costs are to be paid to the Registrar  
to be by him paid over to the party entitled to the  
same.

40

Entered the 5th day of May, 1981.

Sgd. ?  
Cecil II. A. Pope  
Assistant Registrar  
Supreme Court

Judgment of Corbin J.A. - 5th May, 1981

No. 10  
Judgment of  
Corbin J.A.  
5th May 1981

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Mag. Appeal  
No. 102 of 1980

Between

GLORIA MORALES                      Appellant/Complainant

And

10                      LUCILLE BIRCHWOOD                      Respondent/Defendant

Coram: M.A. Corbin, J.A.  
P.L.U. Cross, J.A.  
C. Kelsick, J.A.

Dated: 5th May, 1981.

T. Hosein, S.C. & N. Mohammed - for the Appellant  
G. Benjamin - for the Respondent

J U D G M E N T

Delivered by Corbin, J.A.

20                      This is an appeal against the refusal by a  
Magistrate to make an order in favour of the  
appellant on a complaint brought by her against  
the respondent seeking possession of premises at  
Carrington Street, Scarborough, Tobago.

30                      In her complaint filed on 7th May, 1979, the  
appellant alleged that the premises are decontrolled.  
The onus was therefore on her to show that they are  
outside the provisions of the Rent Restriction  
Ordinance, Ch. 27 No. 18 ("the Ordinance"), and  
if she can do so prima facie the burden would then  
shift to the respondent to show that they are not.

At the close of the case for the appellant  
the Magistrate upheld a submission that no  
case had been made out and so the respondent  
did not give evidence. The unchallenged  
evidence of the appellant was that the respondent  
had become a tenant of the premises in 1960 on  
the death of her husband who had been a tenant  
since 1949 at a monthly rental of \$40.00.  
The rent continued to be \$40.00 per month until

In the Court of Appeal  
No. 10  
Judgment of Corbin J.A.  
5th May 1981  
(cont'd)

1972 when it was increased to \$55.00 per month by mutual arrangement between the parties. On 8th June, 1978 the Rent Assessment Board ("the Board") fixed this sum as the standard rent.

On this evidence the Magistrate held that the premises were not excluded by the Rent Restriction (Exclusion of Premises) Order 1969 ("the Order"), which reads so far as is material:-

"3. There shall be excluded from the operation of the Ordinance with effect from the dates respectively specified in paragraph 4 in relation thereto the following classes of premises .....

(c) all public and commercial buildings, the standard rent of which on the appointed date is or exceeds the rate of Six Hundred Dollars (\$600.00), per annum.

4. The provisions of paragraph 3 shall have effect - .....

(b) in relation to the class of premises described in sub-paragraphs (b) and (c) on the 12th June, 1970."

In arriving at his conclusion, the learned Magistrate said he relied on the provisions of Section 7 of the Ordinance which provides that:-

"Until the standard rent of any premises in relation to any category of letting has been determined by the Board under Section 9, 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 prescribed date or, where the premises were not so let on that date, or, in the case of premises first so let after the prescribed date, the rent at which they were, or are hereafter, first so let."

Applying this provision to the evidence in the present case, he said:-

"Now the evidence of the complainant is that the premises in question were rented from 1949 to approximately 1972 for \$40.00 per month. So that the inference can be drawn that the rent on 12th February, 1954 and on 12th June, 1970 was \$40.00 per month, and I so found. The prescribed date is 12th February, 1954, so that the standard rent

"of the said premises on 12th June, 1970 would be the rent at which the said premises were let on 12th February, 1954, that is, \$40.00."

In the Court  
of Appeal

No. 10  
Judgment of  
Corbin J.A.  
5th May 1981  
(cont'd)

10 It seems to me that in so deciding the learned Magistrate fell into error because he did not fully appreciate the true meaning of the term "standard rent" and consequently failed to give due regard to the fact that the Board had fixed a rent. It is important to differentiate between the standard rent within the meaning of the "Order" and the contractual rent which affects the liability of the parties vis-a-vis each other.

The Order is made under the provisions of the Ordinance and to ascertain the true meaning of the term standard rent as it is used in the Order it is necessary to look at the provisions of the Ordinance. Section 2 defines standard rent as:-

20 "The standard rent of such premises ascertained in accordance with this Ordinance and appropriate to the category of letting in which the same are let."

Section 7 provides that until the standard rent has been determined by the Board according to the principles set out in Section 9 the contractual rent at certain specified dates shall be deemed to be the standard rent.

30 This must be read in conjunction with Section 9 which prescribes the principles on which the Board shall act in determining standard rent and provides, so far as is relevant, that:-

(a) "Where the premises were not let in the same category of letting on or before the prescribed date the standard rent shall be the rent which in the opinion of the Board might reasonably have been expected in respect of a similar letting of similar premises in the same locality on the prescribed date ...."

40 and it goes on to give the Board power to alter the contractual rent by providing:-

(b) "Where the premises were let in the same category of letting on or before the prescribed date, and the standard rent ascertained in accordance with the provisions of Section 7 would in the opinion of the Board be substantially higher or lower than the standard rent

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"ascertained on the principles of paragraph (a) of this section, the Board may determine the standard rent on the principles of that paragraph."

Until the Board so determines the rent the provisions of Section 7 will be used to ascertain the standard rent operative as from the prescribed date. This might almost be termed an interim standard rent. It is significant to note that the contractual rent primarily to be considered in determining the standard rent in Section 7 is the one in effect on the prescribed date. Even if that rent is changed subsequently by agreement of the parties before it is fixed by the Board, it is still deemed by Section 7 to be the standard rent. The wording of Section 9 seems to imply that everything is centered around the prescribed date.

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In my view, the clear intention of the Ordinance is that the standard rent determined by the Board shall be operative as such from the date prescribed by the Ordinance - in this case 12th February, 1954. I am fortified in this view by the judgment of Wooding, C.J. in Greaves vs. Smith 6 W.I.R. where he said at p.406:-

20

"And, finally, sight must never be lost that in assessing the reasonable expectation of what rent would have been payable the operative date is not the date on which the Board makes its determination or any date other than the prescribed date...."=

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In the instant case, the Board fixed a standard rent higher than the contractual rent which was being paid on the prescribed date. In so doing it appears to have acted under the provisions of Section 9(1)(b) to ascertain in accordance with the principles set out in Section 9(1)(a) the rent which might reasonably have been expected on the prescribed date. This rent so determined displaced what would have been the standard rent ascertained in accordance with the provisions of Section 7 and became the standard rent as that term is used in the Order.

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That being so, the standard rent of the premises at the date the Order took effect was \$55.00 per month and they were excluded from the operation of the Ordinance. There was therefore no need for the appellant to establish any of the grounds specified in Section 14 thereof. It seems to me that to hold otherwise would produce the somewhat incongruous result that although the premises were excluded as from the date of the

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Board's determination, they would not have been so excluded at the same rental on any day prior thereto.

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As I see it, Section 6(8) does not relate to nor affect the meaning of the term standard rent as it is used in the Order. It is intended to give the Board power to control the contractual relationship between the parties as e.g. by fixing a date for the commencement of the payment of the rent which would disentitle the tenant from making a claim for a refund under Section 10 of the Ordinance.

In the result, I would allow the appeal with costs and I would order a warrant for possession to issue suspended until 30th June 1981.

MA. CORBIN,  
Justice of Appeal.

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No. 11

Judgment of Cross J.A. - 5th May 1981

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No. 11

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5th May 1981

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TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Mag. Appeal  
No. 102 of 1980

Between

GLORIA MORALES

Appellant

And

LUCILLE BIRCHWOOD

Respondent

Coram: M.A. Corbin, J.A.  
C.A. Kelsick, J.A.  
P.L.U. Cross, J.A.

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Dated: 5th May, 1981.

T. Hosein, S.C. & N. Mohammed - for the Appellant  
G. Benjamin - for the Respondent

J U D G M E N T

Delivered by Cross, J.A.

The Appellant is the owner of commercial

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of Appeal

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Judgment of  
Cross J.A. -  
5th May 1981  
(cont'd)

premises situate at Carrington Street, Scarborough,  
Tobago ("the premises") let to the respondent.

On May 7th, 1979 the appellant filed a  
complaint in the Scarborough Magistrate's Court  
seeking possession of the premises alleging that  
they are decontrolled.

The undisputed evidence of the appellant  
before the Magistrate was that the premises were  
let to the respondent's husband in 1949 at a  
monthly rental of \$40.00. On the death of her  
husband in 1960 the respondent became the tenant  
at the same rental until 1972 when the rent was  
increased to \$55.00 per month by mutual consent.

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On 8th June, 1978, on the application of  
the appellant the Rent Assessment Board ("the  
Board") determined the standard rent of the  
premises to be \$55.00 per month and on 31st  
January, 1979 the appellant served notice on the  
respondent terminating the tenancy with effect  
from 28th February, 1979. The respondent failed  
to comply with the notice.

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At the close of the case for the appellant  
Counsel for the respondent submitted that there  
was no case to answer. This submission was upheld  
by the Magistrate who found that the provisions  
of the Rent Restriction Ordinance Ch. 27 No. 18  
("the Ordinance") applied to the premises since  
they were not excluded by the Rent Restriction  
(Exclusion of Premises) Order 1969 ("the Order")  
and that the evidence did not disclose any of the  
grounds specified in Section 14 of the Ordinance  
on which an order for possession might be made.

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By virtue of Section 3(1) the Ordinance  
applies to these premises unless they can be  
brought within one of the exceptions specified in  
the proviso to the said sub-section and sections  
4 and 20; the onus is on the appellant to show  
that the premises are so excepted. It is clear  
that the proviso to Section 3(1) and Section 20  
have no application to the present case.

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The material portion of Section 4(1) of the  
Ordinance reads as follows:

"4. (1) The President may, if he thinks fit,  
by Order subject to affirmative  
resolution of Parliament ....

(d) exclude from the operation of  
this Ordinance any specified  
premises, or any specified

classes or descriptions of premises in a specified area."

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On the 16th January, 1969 the Order, was made. It received the approval of the House of Representatives on 25th January, 1969 and of the Senate on 11th February, 1969.

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(cont'd)

In so far as is relevant for the purposes of determining this appeal the Order enacts as follows:-

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"2. In this Order -

"the appointed date" means the date on which this Order comes into operation.

3. There shall be excluded from the operation of the Ordinance with effect from the dates respectively specified in paragraph 4 in relation thereto the following classes of premises ...

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(c) all public and commercial buildings, the standard rent of which on the appointed date is or exceeds the rate of six hundred dollars per annum.

4. The provisions of paragraph 3 shall have effect - .....

(b) in relation to the class of premises described in subparagraphs (b) and (c) thereof, on 12th June, 1970."

30

By virtue of Section 13(1) of the Interpretation Act, 1962 the appointed date is 11th February, 1969. The effect of the Order is to decontrol, from 12th June, 1970 all commercial buildings the standard rent of which on 11th February, 1969 was \$50.00 per month or more.

The question which this appeal poses is what was the standard rent of the premises on 11th February, 1969? The answer to that question would determine whether the Order excluded them from the provisions of the Ordinance or not.

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Section 7 of the Ordinance provides that -

"Until the standard rent of any premises in relation to any category of letting has been determined by the Board under Section 9, the standard rent of the premises in relation to

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"that category of letting shall be the rent at which they were let in the same category of letting on the prescribed date...."

From 1949 to 1972 the premises were let as commercial premises at a rent of \$40.00 per month.

Section 2(1) of the Ordinance defines the prescribed date as 11th February, 1954. Applying this provision to the evidence in this case it would seem inescapable that on 11th February, 1969 the standard rent of the premises was \$40.00 per month and they were therefore not excluded by the Order from the provisions of the Ordinance. 10

Counsel for the appellant has contended that since the Board determined a standard rent substantially higher than the rent at which the premises were let on the prescribed date this determination must have been arrived at by applying the principles of paragraph (a) of Section 9(1) of the Ordinance, that is to say, the Board determined a standard rent of \$55.00 per month as the rent which "might reasonably have been expected in respect of a similar letting of similar premises in the same locality on the prescribed date." 20

I accept this contention. What I do not accept is Counsel's conclusion that since the assessment was based on the circumstances obtaining on the prescribed date, the standard rent, whenever determined by the Board, must logically relate back to that date. In my view, Section 9(1) does no more than set out a formula which the Board may use in certain circumstances to determine the new standard rent. In support of his argument Counsel cites the decision of this Court in Greaves v. Smith (1963) 6 W.I.R. 403 and particularly the dicta of Wooding C.J. at p.406 that:- 30

".... sight must never be lost that in assessing the reasonable expectation of what rent would have been payable, the operative date is not the date on which the Board makes its determination or any date other than the prescribed date...." 40

This statement, while it is, as one would expect, a more concise and more lucid exposition of the provisions of Section 9(1) of the Ordinance adds nothing and indeed can add nothing to those provisions; on particular it does not carry the implication that the operative date of the standard rent so determined, as distinct from the factors 50

on which the determination is based, is the prescribed date. Apart altogether from the well established presumption against retrospectivity such an implication is unwarranted merely on the basis of the passage cited, unnecessary in the light of express statutory provisions, and in any case contrary to those same provisions. I refer to sub section (8) of Section 6 of the Ordinance which provides:-

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(cont'd)

10           "(8) An order of the Board shall operate from such date whether before or after the date on which the order is made, as may be specified in the order, or, if no such date be specified from the date of the order....."

20           This enactment and the provisions of Section 4(1) to which I have already referred clearly convey the intent of Parliament that decontrol should only be effected by direct legislative active or specific action in the manner laid down by the legislature and not obliquely or by implication.

30           The order of the Board fixing the standard rent of \$55.00 per month was put in evidence in the proceedings before the Magistrate. It does not specify any date on which it is to come into operation. It is dated 8th June, 1978 and therefore came into operation on that date, and not on any prior date. On the 11th February, 1969 the standard rent of the premises was \$40.00 per month and the learned Magistrate was correct in holding that they are not excluded from the provisions of the Ordinance and the appellant had not discharged the onus of showing that they are.

I would dismiss this appeal and order the appellant to pay the respondent's costs agreed at \$100.80.

P.L.U. CROSS  
Justice of Appeal.

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No. 12

Judgment of Kelsick J.A. - 5th May 1981

No. 12

Judgment of  
Kelsick J.A.  
5th May 1981

I agree with the judgment of Mr. Justice Cross.

C.A. KELSICK,  
Justice of Appeal.

In the  
Judicial  
Committee of  
the Privy  
Council

No. 13

Order granting leave to appeal to the  
Judicial Committee of the Privy Council  
27th October 1981

No. 13  
Order granting  
leave to  
appeal to the  
Judicial  
Committee of  
the Privy  
Council  
27th October  
1981.

L.S.

At the Council Chamber Whitehall

The 27th day of October 1981

BY THE RIGHT HONOURABLE THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL

WHEREAS by virtue of the Trinidad and Tobago Appeals to Judicial Committee Order 1976 there was referred unto this Committee a humble Petition of Gloria Morales in the matter of an Appeal from the Court of Appeal of Trinidad and Tobago between the Petitioner and Lucille Birchwood Respondent setting forth that the Petitioner prays for special leave to appeal from the Judgment of the Court of Appeal of Trinidad and Tobago dated 5th May 1981 dismissing an Appeal by the Petitioner against the refusal of a Magistrate to make an Order in favour of the Petitioner on a complaint brought by her against the Respondent seeking possession of premises at Carrington Street Scarborough Tobago: And humbly praying the Judicial Committee of the Privy Council to grant the Petitioner special leave to appeal against the Judgment of the Court of Appeal of Trinidad and Tobago dated 5th May 1981 and for further or other relief:

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THE LORDS OF THE COMMITTEE in obedience to the said Order have taken the humble Petition into consideration and having heard Counsel in support thereof no one appearing at the Bar on behalf of the Respondent Their Lordships do grant special leave to the Petitioner to enter and prosecute her Appeal against the Judgment of the Court of Appeal of Trinidad and Tobago dated 5th May 1981 upon depositing in the Registry of the Privy Council the sum of £2,000 as security for costs.

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AND Their Lordships do further order that the proper officer of the said Court of Appeal be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy of the Record proper to be laid before the Judicial Committee on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same.

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E.R. MILLS  
Registrar of the Privy Council

IN THE PRIVY COUNCIL

No. 46 of 1981

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O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

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B E T W E E N :

GLORIA MORALES (Complainant)

Appellant

- and -

LUCILLE BIRCHWOOD (Defendant)

Respondent

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RECORD OF PROCEEDINGS

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Solicitors for the Appellant