*Privy Council Appeal No. 46 of 1981*

**Gloria Morales** – – – – – – – – *Appellant*

*v.*

**Lucille Birchwood** – – – – – – – *Respondent*

FROM

**THE COURT OF APPEAL OF TRINIDAD AND TOBAGO**

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# JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 4TH OCTOBER 1982

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*Present at the Hearing:*

LORD FRASER OF TULLYBELTON
LORD SCARMAN
LORD BRANDON OF OAKBROOK
LORD BRIGHTMAN

[*Delivered by* LORD SCARMAN]

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In this appeal from the Court of Appeal of Trinidad and Tobago an important question is raised as to the true construction of the Rent Restriction Ordinance Ch.27 No.18 (now re-enacted with necessary revisions as the Rent Restriction Act). The Ordinance became law on 9th October 1941. It restricts the recoverable rent and the landlord's right to possession of all land and premises to which it applies. The Ordinance applies to the letting of building land, dwelling-houses, public and commercial buildings within areas specified in its schedule or by order made under section 4(1)(*a*). The recoverable rent is the "standard rent" ascertained in accordance with the Ordinance to which may be added certain permitted increases in rent. There is also power under the Ordinance for orders to be made to exclude premises from its operation. In 1969 the Governor-General made the Rent Restriction (Exclusion of Premises) Order which excluded as from 12th June 1970 (inter alia) all public and commercial buildings, the standard rent of which on 11th February 1969 was or exceeded $600 a year.

The premises, which are the subject of this appeal, are a commercial building in Carrington Street, Scarborough. The appellant is the owner. The respondent is her tenant. The appellant's case is that the premises were excluded from control as from 12th June 1970 because the standard rent on 11th February 1969 exceeded $600 a year, being then $55 a month. The respondent's case is that the standard rent on that date was $40 a month ($480 a year) so that the premises remained within the Ordinance notwithstanding the Exclusion Order.

The issue turns on the true construction of the provisions in the Ordinance which regulate the ascertainment of standard rent. The critical provisions are sections 7 and 9. If, as in the present case, premises were let on or before the prescribed date (11th February 1954, section 2(1)), the contractual rent at that date is the standard rent " until " (section 7) the appropriate Rent Assessment Board makes a determination under section 9.

The history of the tenancy and of the appellant's attempt to recover possession can be briefly told. The premises were let in 1949 to the respondent's husband at a monthly rental of $40. On his death in 1960 the respondent became the tenant. The contractual rent remained at this figure until 1972, when it was increased by mutual consent to $55 a month. On 8th June 1978 the Rent Assessment Board determined the standard rent at $55 a month. The appellant relies upon this determination to establish a standard rent sufficiently high to take the premises out of control. Her case is that the determination relates back to the prescribed date, namely 11th February 1954. Acting on this view of the standard rent, she served on the respondent a notice to quit expiring on 28th February 1979. The respondent held over, and the appellant by ejectment complaint began these proceedings in the Scarborough Magistrate's Court. The Magistrate dismissed her claim, finding that the standard rent on 11th February 1969, the appointed date for the purposes of the Exclusion Order, was below $600 a year. In effect, he rejected the appellant's submission that the Board's determination of 8th June 1978 related back to the prescribed date, 11th February 1954, and accepted the respondent's submission that the contractual rent at that date was the standard rent at that date. On appeal, the Court of Appeal by a majority upheld his decision.

The Ordinance applies to all building land, dwelling-houses and public and commercial buildings, whether let furnished or unfurnished, in areas described in the schedule: section 3(1). For each area there is constituted a Rent Assessment Board: section 5. The Board exercises judicial functions in respect of a number of matters; and it has power to specify the operative date of any order it makes. Section 6(8) enables this power to be exercised retrospectively (or prospectively) but goes on to provide that, if no such date is specified, the Board's order will be effective as from the date on which it is made.

One of the matters in respect of which the Board has power to make a final judgment or order is the determination of a standard rent. The definition of standard rent is in section 2(1), and is in these terms:—

> " ' Standard rent ' in relation to premises let at the commencement of this Ordinance, or hereafter let, means 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; "

Its ascertainment is governed by sections 7, 8 and 9. Section 7 provides as follows:—

> " 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: "

There then follows a proviso which need not be considered for the purpose of this appeal.

Section 8 provides for applications to the Board to determine standard rent. The section ensures that at all times there will be an ascertained or ascertainable standard rent of premises within the categories of letting to which the Ordinance applies. Where premises are intended to be let within any of these categories, it shall be lawful to apply to the Board to fix *provisionally* the standard rent: and, if the premises are later let upon the terms and in the circumstances disclosed to the Board, the provisional standard rent shall be deemed to be the standard rent: section 8(1).

Where there has been a prior letting, there is, therefore, no *obligation* to apply to the Board to fix one; for section 7 provides the answer to the question:— what is the standard rent? But where premises are intended to be let for the first time, *i.e.* without having been previously let in the same category, it is the duty of the person proposing to let to apply to the Board to fix the provisional standard rent. Failure to apply is a criminal offence: section 8(2). The importance of this subsection is that in circumstances, *i.e.* no prior letting, where section 7 will not yield a standard rent, the intending landlord must apply, *before he lets*, to fix a provisional standard rent. It should be noted that the Ordinance uses the term "provisional" in respect of standard rent only in this context, *i.e.* where it is desired, or it is the landlord's duty, to obtain a determination for the purpose of a future letting. The term is not used by the Ordinance to describe a standard rent determined by reference to a contractual rent under section 7.

Section 8(3) enables landlord or tenant to apply at any time to the Board to determine a standard rent subject to the proviso that where the Board has already made a determination no further application shall be entertained unless there has been a material change in either the terms and conditions of the tenancy or in the circumstances affecting the determination of the standard rent. Subsection (5) provides for the finality (subject to the exception specified in subsection (3)) of the Board's determination.

Section 9(1) lays down the criteria to be observed by the Board when determining a standard rent. First, the basic criterion is expressed to be "the principles of section 7", *i.e.* the contractual rent specified by the section (in this case the rent at which the premises were let on the prescribed date, 11th February 1954). Paragraph (*a*) of the subsection deals with the situation where the premises were not let in the same category on or before the prescribed date, and provides that the standard rent is to be the rent which, in the opinion of the Board, might reasonably have been expected on the prescribed date. Paragraph (*b*) modifies the section 7 criterion where in the opinion of the Board the actual rent on or before the prescribed date would be substantially higher or lower than a rent ascertained in accordance with section 9(1)(*a*). In such circumstances the Board may make a determination on the principles of that paragraph.

The appellant contends that upon the true construction of sections 7 to 9 of the Ordinance any standard rent reached by the application of section 7 is only provisional or "interim": it will be superseded by a Board's determination under paragraph (*b*) of section 9. Such a determination, it is submitted, not only takes the place of the contractual rent as the standard rent but relates back to the prescribed date so that it must be treated as having been at all times the standard rent.

The point is not easy, as the difference of opinion in the Court of Appeal shows. After very anxious consideration their Lordships find themselves in agreement with the majority in the Court of Appeal that

this cannot have been the intent of Parliament. Section 9(1) sets out a formula to be used for the ascertainment of a standard rent where either there has been no prior letting in the appropriate category or, if there has been, the rent then agreed is not (because it was either too high or too low), in the Board's view, a reliable indicator of a market rent on the prescribed date. The Board can, if it thinks fit, back-date its order determining a standard rent: but, if it does not, the order is effective as from the date on which it is made: section 6(8). The Ordinance does envisage a provisional or interim standard rent: but only in the circumstances envisaged in section 8, *i.e.* where it is desired or it is the landlord's duty to have a Board determination before entering into a proposed letting. Upon the true analysis of the section, it is the Board's decision which is provisional, in that, after the proposed letting has become a fact, the Board may review it.

There is no suggestion to be found in the Ordinance that the standard rent ascertained in accordance with section 7 is provisional. Indeed, save for the possible ambiguity lurking in the simple English word " until ", the section, when read with section 9, suggests strongly that section 7 states the principle of ascertainment and section 9 the modifications of the principle needed to meet certain specified circumstances. Their Lordships think it would be contrary to accepted principles of statutory interpretation to put the weight upon the word " until " which appears to be needed to give effect to the appellant's submission. The word " until " is essentially temporal in its meaning, though it is frequently used as meaning " unless ". It is, however, in the present context as consistent with the rent ascertained under section 7 being the standard rent until it is superseded as it is with the construction put upon it by the appellant that it indicates that there is no true standard rent unless and until the Board determines one.

The word, therefore, does not help. It affords no guidance as to the intention of Parliament. The proper approach is to read sections 7, 8 and 9 together and in the context of the Ordinance read as a whole. It was the view of the majority of the Court of Appeal that sections 7 and 9 were intended to set out a formula only, and do not deal with the quite different question, viz. the date as from which a Board's determination takes effect. That question is dealt with in section 6(8) of the Ordinance. Their Lordships agree with this view. The two sections provide " principles " and modification of principles, where needed, for the ascertainment of the standard rent. The basic principle is to be found in section 7. Modifications, where necessary, are set out in section 9(1). The modifications are needed to meet two sets of circumstances: —

(*a*) where there is no prior letting, and

(*b*) where the prior letting, if used to determine the standard rent, would yield an unjust result.

It was, however, suggested both to the Court of Appeal and their Lordships that there is authority for the contrary view. It was submitted that the Court of Appeal has previously ruled that the sections do deal with the effective date of the Board's order and has accepted the " relation back ", or retrospective, interpretation of the sections; the case is *Greaves v. Smith* (1963) 6 W.I.R. 403. Their Lordships agree with the view of this decision expressed by Cross J.A., who delivered the majority judgment below. It does exactly the opposite. It supports the view that the relevance of the prescribed date is not as the operative date of the Board's order but as the critical date for the purpose of assessment: see Wooding C.J. *loc. cit.*, page 406.

When one looks to other provisions in the Ordinance, there are strong indications that Parliament did not intend in sections 7 and 9 to provide for a mandatory back-dating of a Board's order determining a standard rent. The implications of such a mandate could clearly work very serious injustice in the light of the critical role of the standard rent in determining the landlord's recoverable rent. In some cases it would be just to allow a tenant to recover "irrecoverable" rent paid by him in the past to his landlord: but not in all cases, nor always, even where reasonable, for a period going back to the prescribed or some other very early date. The Board, exercising its discretion under section 6(8), can do justice. A mandatory retrospective order, which is the appellant's case, is bound in some, and perhaps many cases, to work injustice.

Accordingly their Lordships agree with the majority of the Court of Appeal and dismiss the appeal. The respondent having taken no part in the appeal there is no order for costs.

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**In the Privy Council**

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**GLORIA MORALES**

*v.*

**LUCILLE BIRCHWOOD**

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DELIVERED BY

LORD SCARMAN

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