

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

2017/PUB/jrv/00015

Public Law Division

BETWEEN

GC CLAIMS ADJUSTERS LTD.

Plaintiff

AND

THE INSURANCE COMMISSION OF THE BAHAMAS

Defendant

Before Hon. Justice Ian R. Winder

Appearances: Avron Thompson for the Plaintiff

Lorna Longley-Rolle with Keen Smith and Yolande Rolle for the
Defendant

2 November 2017

WINDER, J

This is an application for leave to apply for judicial review which I adjourned to be heard inter partes. The principal issue arising on the leave application is one of whether the application offends the time restrictions arising under Order 53 rule 4 of the Rules of the Supreme Court.

1. On 30 May 2017 the Applicant, GC Claims Adjustors Ltd., filed a Notice of Application for Leave to Apply for Judicial Review. In the said Notice the decision sought to be reviewed was identified at paragraph 3 thereof as follows:

[T]he Plaintiff lodged an application for registration as a Public Adjuster at the Insurance Commission of the Bahamas pursuant to Section 27 of the Insurance Act 2005 and Section 120(7) of the Insurance (General) Regulations, 2010. That in a letter dated 12th day of June 2015, the Defendant advised the Plaintiff that its application was refused on the basis that the Applicant did not have an Individual Adjuster with a Level 2 qualification engaged as a full time employee. That Section 120(7) of the Insurance (General) Regulations, 2010 does not make any such provisions as stipulated by the Defendant.

2. The relief sought at paragraph 6 of the said Notice were the following:
 6. THAT THE RELIEF SOUGHT IS:
 - a) An order of Certiorari to remove into this Honourable Court and quash the Defendant's decision dated 12 June 2015 insofar as:
 - i. That the defendant's decision is illegal in that the Defendant fettered its discretion by adapting a policy that was too stringent
 - ii. That the Defendant failed to have regard to matters which it ought to have considered such as the expertise experience and qualifications of each of the Board members notwithstanding the provisions of but not limited to Section 120(7) of the Regulations; and
 - iii. That the Defendant's decision was Wednesbury unreasonable and irrational
 - b) An Order of Mandamus directed to the Insurance Commission of The Bahamas requiring it to register the Applicant as a Public Adjuster;
 - c) A Declaration that the Applicant has met all the requirements as provided by the Insurance Act and its associated Regulations;
 - d) A Declaration concerning the proper interpretation of Section 120(7) of the Insurance (General) Regulation, 2010;

e) An Order under Order 53, Rule 4 of the Rules of the Supreme Court that the period in which the Applicant may apply for leave to apply for judicial review be extended.

3. Order 53 rule 4 of the Rules of the Supreme Court provides:

4. (1) An application for judicial review shall be made promptly and in any event within six months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made.

(2) Where the relief sought is an order of certiorari in respect of any judgment, order, conviction or other proceeding, the date when grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceeding.

(3) The preceding paragraphs are without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

4. The Plaintiff sought leave to extend the time limited by Order 53 rule 4(1). At paragraph 7(d) of the Notice it says:

[T]here is good reason why the Court should grant the Plaintiff an extension of time for leave to apply for judicial review in that the Plaintiff has maintained consistent communication with the Defendant concerning the Defendant's decision. That the most recent correspondence is a letter dated 16 May 2017 that was sent to the Plaintiff by the Defendant concerning its application.

5. A review of the appropriate law on the question of promptness and delay was carefully given by *Isaacs JA* in the Court of Appeal case of *R v Bahamas Bar Council ex parte Marva Moxey SCCivApp No. 86 of 2015*. At paragraphs 26-28 he stated:

26. In *Regina Securities Commission of the Bahamas v. Ex Parte Petroleum Products Ltd* [2000] BHS J. No. 30, an application for judicial review by Petroleum Products Ltd. ("Petroleum") in respect of the decision of the Securities Commission of The Bahamas (the "Commission") to register a prospectus for the public floatation of Freeport Oil Holding Company Limited ("FOHCL"), the parties disagreed as to the date upon which Petroleum became aware of the 11 grounds upon which a judicial review application could be made. The Commission registered the

prospectus on 1 June 1999; but Petroleum contended that the operative date was, 1 July 1999. Hayton, JA said at paragraphs 18 and 19:

18. In my view, when grounds for the application first arose was on 1 June 1999, when the prospectus was registered, being the complained of conduct of the Commission, not on 1 July 1999 when FOHCL inevitably took advantage of such registration to market itself to the public. Thus, the application is even beyond the six month limit, quite apart from the fact that, as the English Court of Appeal stated in *R v Stratford-on-Avon DC ex p Jackson* [1985] 1 WLR 1391 at 1322, 'The essential requirement is that the application must be made promptly'

19. If such essential requirement is not satisfied in any event within the objective six month period, the question arises whether or not "the Court considers that there is good reason for extending the period". It is here, in my view, that the Court should take account of the time the impugned matter came to the knowledge of the applicant, it should consider whether the applicant, after acquiring such knowledge, made the application promptly, there being a greater need to act promptly the greater the period since the objective date of the grounds for the application. If the applicant did then apply promptly the period should be extended to that necessary to make the application timely.

27. In *Bahamas Hotel Catering & Allied Workers Union v. The Attorney General and the Bahamas Hotel & Maintenance & Allied Workers Union; West Bay Management Limited v. Bahamas Hotel Maintenance & Allied Workers Union* [2010] 1 BHS 3. No. 67, the appellant sought to reverse a decision of then Chief Justice Burton Hall to refuse the relief sought in a judicial review application. Longley, JA (as he then was) delivering the decision of the Court, stated:

16. Applying the overriding principle of promptness, it seems to me that where the six month limitation period has expired the court must ask itself several questions. The first is: what is the decision the applicant seeks to impugn? Second, when did the applicant first become aware of the decision it seeks to impugn? Third, did it act promptly in seeking leave to make an application for judicial review once it became aware of the decision? Fourth, as an alternative to question three, if the applicant did not act promptly in making the

application to challenge the decision it seeks to impugn has it otherwise proffered good reason for the entire period of delay?

17. There is undoubted overlap between questions three and four. It is only if the court concludes that the applicant acted promptly after becoming aware of the decision it seeks to impugn, or that it has proffered good reasons to explain the delay in making the application to apply for judicial review, will time be extended on the basis that good reason exists.

28. Longley, JA continued at paragraph 26 and said, inter alia:

26. However, for the purposes of Order 53 r.4 of the RSC time begins to run from the date when grounds for the application first arose.”

6. Following the guidelines of *Longley JA* (as he then was), in *Bahamas Hotel Catering & Allied Workers Union v. The Attorney General et al; West Bay Management Limited v. Bahamas Hotel Maintenance & Allied Workers Union*, I begin by determining what is the period of delay. The impugned decision is dated 12 June 2015 and was received by the Plaintiff shortly thereafter, as it responded to the said decision in an email on 1 July 2015. This application was commenced on 30 May 2017 approximately 2 years later. The period of delay is therefore almost 2 years.
7. Did the Applicant act promptly in seeking leave to make an application for judicial review once it became aware of the decision? Having considered the evidence filed on its behalf, I am not satisfied that there was any promptness by the Applicant in applying for judicial review. The evidence is clear that not only wasn't there any complaint about the decision of the Commission, the Applicant attempted to comply with the order and only when it was unable to locate a suitable person, it moved this application for judicial review some 2 years later.

8. Having failed to act promptly in making the application to challenge the decision, the final matter for consideration, as identified by **Longley JA**, is whether the Applicant proffered good reason for the entire period of delay. I am not satisfied that good reason was provided for the **entire** period of the delay. The Applicant says that it had maintained consistent communication with the Defendant concerning the Defendant's decision and as recent as 16 May 2017. The letter of 16 May 2017, which the Applicant says ought to permit the grant of the extension provides as follows:

ICB. No.: 53007
In replying please quote this number

BY HAND

May 16, 2017

Murrio D. Ducille Attorney-At-Law
Bayparl Bldg., Office 9
P.O. Box N-4645
Nassau, Bahamas

Attention: Attorney Charisma Romer
Murrio D Ducille Atty-At-Law Chambers

Dear Sir/Madam;

RE: NEW APPLICATION FOR PUBLIC ADJUSTER REGISTRATION –
G.C. CLAIMS ADJUSTER LTD.

Further to your email received April 5, 2017, with the information in regards to a proposed part-time adjuster for consideration; the Commission has no objection in considering this arrangement, however, the individual's needs to be fully ACILAI qualified pursuant to Insurance (General) Regulations, 2010 sec. 119(a).

In addition, the individual named as the proposed adjuster, Ms Rema Martin is already registered as an individual adjuster, for The Insurance Company of the Bahamas and is also employed with J.S. Johnson Company Ltd., Agents & Brokers. As this is the case she would not be a suitable candidate for this application. Once you have selected the person to employ as the adjuster for the proposed application we will review,

along with the proposed commitment to obtain full ACILAI qualification for consideration.

Should you have any questions, please feel free to contact the undersigned at 397-4168.

Yours faithfully,
THE INSURANCE COMMISSION OF THE BAHAMAS

_____ (Signed)
Patrice Rolle, Dip CII, MCM
Manager (Intermediary & Market Conduct Unit)

Cc: Mr. Theofanis Cochinamogulos

The letter merely confirms the position stated in the decision of June 2015 and comments on the suitability of the person proposed as adjustor.

9. Following the decision, the Applicant inquired on 1 July 2015 as to whether someone with a Diploma in Insurance (DIP CII) would be suitable as the adjuster. The only communication which takes place between the parties occur in April 2016, (some 10 months later) and March 2017 (some 20 months later) when inquiries are made as to whether the adjustor may be engaged on a part time basis. I am therefore not satisfied that any good reason has been advanced as to why the Applicant has delayed in seeking to challenge the application for the 2 year period, having been aware since June 2015 of the decision upon which it now claims to be aggrieved.
10. In all the circumstances therefore I refuse the application for leave to apply for judicial review having regard to the delay occasioned.

Dated the 6th day of December 2017


Ian Winder

Justice