

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 64 OF 1995

**BEFORE: THE HON. MR. JUSTICE RATTRAY - PRESIDENT
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MR. JUSTICE WOLFE, J.A.**

**BETWEEN CORNWALL HOLDINGS DEFENDANT
 CORPORATION APPELLANT**

**A N D INTERNATIONAL HOTELS PLAINTIFF
 LIMITED RESPONDENT**

**David G. Batts, instructed by Livingston, Alexander & Levy
for the Appellant**

**Mrs. Sandra Minott-Phillips and Miss Nicole Lambert
instructed by Myers, Fletcher & Gordon for the respondent**

October 23 and December 5, 1995

RATTRAY P.:

This appeal challenges the Order of Edwards J. made in Chambers on the hearing of a Summons for speedy trial on the 20th June 1995, whereby he ordered the suit to be placed on the speedy trial list.

The defendant/appellant is aggrieved by this Order and rests his dissatisfaction not on any injustice or inconvenience which will accrue to him by the making of the Order but on the basis that:

- (a) there was no sufficient evidence to justify the making of the Order;
- (b) the learned Trial Judge relied upon the pleadings for his determination, and pleadings are not evidence;
- (c) the allegation of the plaintiff/respondent that certain elevators in the hotel the subject matter of the action had become unsafe and hazardous by virtue of this fact that they were operating beyond their normal life span was rebutted by an affidavit from a deponent who serviced the elevators that they were by virtue of regular servicing not unsafe, although admitted they were operating beyond their normal life span.

Section 344 (2) of the Judicature Civil Procedure Code states as follows:

“Actions set down for trial shall be included in the Cause lists in the order in which they were respectively set down, and unless a Judge or Registrar otherwise directs, shall come on for trial as nearly as may be in that order.”

This gives to the Judge making an Order for speedy trial a very wide discretion which nevertheless must have some acceptable basis for its exercise.

Since the defendant/appellant is not pleading that it will suffer inconvenience on its part or injustice, the only complaint can be that there was no sufficient material before the Judge upon which he could judicially make the Order, or that an injustice is created by permitting the plaintiff/respondent to “jump the queue” in respect of other cases which normally would have come on for trial before the instant case.

The subject-matter of the suit is the Trelawny Beach Hotel, a resort hotel, situated on Jamaica's North coast. The plaintiff/respondent is the owner of the hotel which is operated by the defendant/appellant under lease from the owner. One of the duties placed on the defendant/appellant is to keep the hotel plant and machinery in good and substantial repair and operating condition as it was at the commencement of the lease. Further the defendant/appellant has a duty of refurbishment and repairs.

Issue is joined between the parties. For the purposes of the application for a speedy trial the plaintiff/respondent relied upon an affidavit of Mr. Cameron Burnett, a Director of the plaintiff/respondent Company who identifies the main dispute between the parties to be "the question of which party is responsible for the costs of effecting refurbishment and repairs."

The hotel is a resort which caters to both local and overseas guests.

Mr. Burnett maintains that "the hotel is in a hazardous and unsafe state and that repairs are required to be carried out as a matter of utmost urgency."

He zeros in on the service elevators which he says "have an estimated safe and useful life for 20 years and are operating beyond their normal life span and must be replaced."

The defendant/appellant relies upon the affidavit of Mr. Arnold Beckford, a trained elevator serviceman who deponed that:

"The elevators have a service life of approximately twenty (20) years and it is in consequence necessary to upgrade and modernize.

“However, as they are and have always been regularly and properly maintained they continue to be fit and safe for use. The fact that the elevators have reached their normal life span of twenty (20) years does not mean that they are hazardous or unsafe. Indeed the actual life span of these elevators has increased because of the regular and proper maintenance over the years.”

In relation to the allegations of lack of safety the learned Trial Judge stated:

“So far as the allegation that the hotel is unsafe and the possible effect of this on tourism industry are concerned, one can foresee the implications that will arise if a tourist is injured.”

The learned Trial Judge in the exercise of his discretion is entitled to take into account the centrality of the tourist industry to Jamaica’s economic health. He is not only confined to the affidavits filed in support of the Summons for speedy trial but is entitled also to examine the pleadings to determine the issues between the parties to assist him in coming to a just determination of whether the speedy trial requested is desirable or not.

Counsel for the defendant/appellant relies heavily on the dictum of Carey J.A. in ***Bruce Golding and Another v Pearnel Charles and Another - S.C.C. A. No. 27 of 1991***, in which he stated:

“Judges should in making this decision be provided with material justifying such an order. The judge must consider the nature of the case, the reasons for urgency in its disposal over other cases, bearing in mind that few aggrieved parties do not desire an early trial. The fact that a great deal of money is at stake, is not, in my view, a relevant

“consideration. The fact that the parties are important or national figures, should not by itself justify an order. Where the postponement of having an early decision in the case might have serious financial or other repercussions to the economy or a segment of the society, or if irreparable harm might result to a party, all these constitute the sort of factors which should predispose a judge to granting such an order.”

It is not to be taken that Carey J.A. intended exhaustively to enumerate all the factors which Judges should take into account in exercising a discretion to order a speedy trial. The facts of each particular application must be examined carefully to determine whether the discretion should be exercised or not. In this contemplation the pleadings of the case must be helpful in assisting the Judge to arrive at a just decision.

In a matter in which no disadvantage accrues to the defendant/appellant by the speedy trial order and in which the oral judgment of Edwards J. highlights the considerations affecting a vital national industry if tourists are injured by the unsafe condition existing in a resort hotel and in which all the relevant material was examined by the Trial Judge with proper judicial scrutiny this Court should not disturb a decision based upon a discretion which in our view was properly exercised even if it resulted in a “jumping of the queue” which is the inevitable result of any Order made for speedy trial.

In the event therefore we dismissed the appeal with costs to the plaintiff/respondent.

DOWNER J.A.:

I agree.

WOLFE J.A.:

I agree.