

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. GDAHCV2018/0229

BETWEEN

DORSET CHARLES

Claimant

AND

THE PERMANENT SECRETARY, MINISTRY OF FINANCE

Defendants

Appearances:

Mr. Anslem Clouden of counsel for the claimant
Mr. Adebayo Olowu of counsel for the defendants

2020: June 26.

JUDGMENT

[1] **GLASGOW, J.:** On this application the defendant has asked the court to set aside its order granting permission to the claimant (Mr. Dorset) to file judicial review proceedings seeking an order of mandamus. The defendant wishes the court to set aside the order granting permission because Mr. Dorset –

(1) requested permission to file judicial review proceedings to obtain an order of mandamus without providing evidence that he demanded payment of the moneys due to him and without providing evidence of a refusal of that demand; and

(2) filed the application seeking permission after an inordinate period.

Background

[2] The defendant's set aside application was filed on 21st September 2018. It is supported by the affidavit of 'the then' Attorney General who helpfully relates a history of the claim. In 1996 Mr. Dorset filed Claim No. 1996/0477 against the defendant and the Attorney General of Grenada (the defendants). He obtained judgment on 19th January 1998. The defendants were dissatisfied with that outcome and filed an appeal against the same. Mr. Dorset and the defendants reached consensus on the appeal which was reduced to a consent order dated 17th July 1998.

[3] Mr. Dorset thereafter utilized section 21(1) of the Crown Proceedings Act, Cap. 74 of the revised laws of Grenada (the Act) and was granted a registrar's certificate dated 16th September 1998. Section 21 of the Act reads:

(1) Where in any civil proceedings by or against the Crown, or in connection with any arbitration to which the Crown is a party, any order (including an order for costs) is made by any court in favour of any person against the Crown or against a Ministry or Government department or against an officer of the Crown as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order:

Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.

(2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney-General.

(3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Permanent Secretary (Finance) shall, subject as hereinafter provided, pay to the person entitled or to his or her solicitor the amount appearing by the certificate to be due to him or her together with the interest, if any, lawfully due thereon:

Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such directions to be inserted therein.

(4) Save as aforesaid no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Crown of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Crown, or any Ministry or Government department, or any officer of the Crown as such, of any such money or costs.

- [4] The judgment debt (the debt) remains largely unpaid. Mr. Dorset filed an application on 11th June 2018 seeking permission to bring judicial review proceedings for an order mandating the Government to pay him the sums due to him. The application seeking permission named the defendants as parties. On 27th June 2018, this court granted Mr. Dorset permission to bring judicial review proceedings against the Permanent Secretary, Ministry of Finance and not against the Attorney General. Judicial review proceedings are brought to review the process by which decisions are made by public officials or bodies or individuals performing public functions. There is no evidence in this case that the allegations in this case concern decision(s) made by the Attorney General. Rather, the

complaints turn on the inaction of the Permanent Secretary, Ministry of Finance in respect of the failure to pay Mr. Dorset the fruits of his judgment.

- [5] Upon receiving and reviewing the application for permission the court was concerned that Mr. Dorset was asking the court to grant him permission to file judicial review proceedings that concerned a judgment that was granted to him since January 1998. In accordance with CPR 56.4(3) I ordered Mr. Dorset to serve the defendants with the application for permission so that the court can conduct an inter partes hearing. The defendants did not file a response or appear at the inter partes hearing. Permission was granted to Mr. Dorset to file judicial review proceedings against the defendant. The defendant has applied to the court to set aside the grant of permission for the reasons I have outlined previously.
- [6] Mr. Dorset attached to his application for permission 2 letters; one dated 3rd February 2004 and the other dated 5th January 2018. The 2004 letter was addressed to 'the then' Minister of Finance and the 2018 letter was addressed to 'the then' Attorney General. In both letters Mr. Dorset lamented the delay in payment of the judgment debt due to him. On the set aside application, the defendant complains that these letters are insufficient to demonstrate that Mr. Dorset demanded payment prior to approaching the court for an order of mandamus. The defendant also resists the view that Mr. Dorset acted promptly when he sought the court's permission to bring judicial review proceedings. It is contended that Mr. Dorset waited for close to 2 decades before bringing the permission application and that a delay for so long is unreasonable. The permission to bring judicial review proceedings after such a lapse of time is detrimental to good administration as it may affect Government's ability to meet its obligations to pay sums due to more recent judgment creditors and may additionally affect the general financial affairs of the Government. The defendant concludes that Mr. Dorset has proffered no good reason for the delay. Permission to proceed with judicial review proceedings ought to be set aside.

- [7] Mr. Dorset, in response, argues the converse. He points out in his affidavit in response that he made innumerable visits and personal attendances to the Ministry of Finance and office of the Inland Revenue. His demands were met with promises for payment, referrals to various departmental managers who were to arrange payments and requests for his patience while Government made appropriate arrangements for payment to be made. The letters included on his application were, in his view, supplementary to his personal entreaties for payment. He posits that the delay in this case was excusable given his lengthy forbearance in allowing the Government to meet its obligations based on the many interactions and promises he outlined in his response to the set aside application.
- [8] The written legal submissions of both parties largely repeated their various contentions on delay and the issues of a demand.

Discussions and ruling

- [9] I disagree with the defendant on both of grounds of the set aside application.

Mandamus – demand for payment

- [10] In respect of the demand prior to an application for order of mandamus, subject to what I have to say below on the exercise of the court's jurisdiction on a set aside application of this sort, I adopt the learning on the law as presented by the authors of **Wade, Administrative Law**¹ who explain that –

*“It has been said to be an ‘imperative rule’ that an applicant for mandamus must have first made an express demand to the defaulting authority, calling upon it to perform its duty, and that the authority must have refused. **But these formalities are usually fulfilled by the conduct of the parties prior to the application, and refusal is readily implied***

¹ 8th Edition at pg. 615

from conduct. The substantial requirement is that the public authority should have been clearly informed as to what the applicant expected it to do, so that it might decide at its own option whether to act or not.² [bold emphasis mine].”

- [11] Any cursory review of the facts of this case would lead one to conclude indubitably that there was the necessary demand for payment followed by Governmental delay in paying further to that demand. Indeed the letter dated 3rd February 2004 recalls correspondence between the parties on the issue of payment. The 3rd February 2004 letter also recounts that Government acknowledged the debt by paying a part of the sum due to Mr. Dorset. The 3rd February 2004 letter concludes by requesting ‘*an appointment ... to finalise arrangement for full satisfaction of this debt*’ and forecasts further legal action for full enforcement of the same.
- [12] Equally, the letter dated 5th January 2018 recites further engagements between the Government and Mr. Dorset towards the full satisfaction of the debt. Mr. Dorset again forewarned recourse to the courts if the Government did not meet the obligation to pay the sums due to him.
- [13] I observe that ‘the then’ Attorney General in his affidavit supporting the set aside application acknowledges receipt of the 5th January 2018 letter but his affidavit did not state whether or what steps Government took in response to either the 3rd February 2004 or 5th January 2018 letters. Equally the assertions by Mr. Dorset that he made many personal visits to Government offices and of his engagements with various Government officials and ‘managers’ remain uncontroverted. The confluence of all these factors convinces me that that Government was made aware of what Mr. Dorset expected of it and was quite well placed to decide at its own option whether to act on his demands or not. There is no debate that it is the

² The State (Modern Homes Ltd) v. Dublin Corporation [1953] IR 202; R. v. Brecknock & Abergavenny Canal Co. (1835) 3 Ad. & E217; and R. v. Commissioners of Public Utilities ex p. Halifax Transit Corpn. (1970) 15 DLR (3d) 720.

sloth in satisfying the debt to Mr. Dorset that has drawn the parties into the present discourse.

- [14] Mr. Dorset has therefore made the requisite demand for payment which has not been fully met by the Government. But has he come to this court promptly to seek permission to obtain an order to compel the Government to act? The Government says not. The Government further claims that the court should not grant permission or more accurately, reverse the permission previously granted to Mr. Dorset because of the delay. I disagree for the reasons set out below.

Delay

- [15] In this case and as recited above, the application for permission was made without notice to the defendant but on receiving the papers the court ordered Mr. Dorset to serve the defendant with the same. Mr. Dorset indeed served the application on the defendant on 22nd June 2018. Although served with the application as ordered by the court, the defendant did not appear at the hearing or make submissions but has applied to set aside the grant of permission.

- [16] I would say immediately that CPR 56 which applies to claims of this nature does not include a rule giving the defendant the right to apply to set aside the grant of permission. Under the rules applicable to applications generally (CPR 11), it is observed that CPR 11.16³ may avail a defendant who has been served with an order that was granted further to an application made without notice to that

³ CPR 11.16 reads –

11.16 (1) A respondent to whom notice of an application was not given may apply to the court for any order made on the application to be set aside or varied and for the application to be dealt with again.

(2) A respondent must make such an application not more than 14 days after the date on which the order was served on the respondent.

(3) An order made on an application of which notice was not given must contain a statement telling the respondent of the right to make an application under this rule.

defendant. However, CPR 11.16 is not applicable to the CPR 56 proceedings⁴. Even if it is the case that CPR 11.16 could avail a defendant to a CPR 56 claim, that rule would not assist the defendant in this claim since the court ordered and conducted an inter partes hearing.

- [17] The defendant has asked the court to revisit its ruling on delay. After some debate and further hearings on the point, it is clear that notwithstanding the absence of a specific rule in CPR 56 permitting the defendant to apply to set aside the grant of permission, the court has jurisdiction to consider challenges to the grant of permission. The Privy Council in **Sharma v Browne et al**⁵ observed that –

Where leave to move for judicial review has been granted, the court's power to set aside the grant of leave will be exercised very sparingly: R v Secretary of State for the Home Department, Ex p Chinoy (1991) 4 Admin LR 457, 462. But it will do so if satisfied on inter partes argument that the leave is one that plainly should not have been granted.

- [18] See also Balcombe LJ in **R v Customs & Excise Commissioners, ex p. Eurotunnel PLC**⁶ where he noted that the jurisdiction to set aside is used sparingly and even more so in cases where the grant was made inter partes.

- [19] I would add the useful caution of the court in **Gordon v DPP**⁷ where the court admonished that –

It follows that the applicant for the order to set aside carries a heavier burden than the original applicant for leave. The latter has to show that he has an arguable case. The former has to establish that leave should not

⁴ See Dale Austin v Attorney General of Jamaica [2013] JSMC Civ. 26; Liburd v Nevis Land Development Corp and Minister of Agriculture NEVHCV 2018/0054 (per Glasgow J); and Richard Frederick and Lucas Frederick v Comptroller of Customs and Attorney General SLUHCVAP 2008/0037

⁵ PC Appeal No 75 Of 2006 at paras. 14 and 22

⁶ [1995] CLC 392

⁷

have been granted, a negative proposition. It is both logical and convenient to the administration of justice that this should be so. The leave procedure was intended to provide a filtering process, a protection against frivolous or vexatious applications. The judge at the ex parte stage will scrutinise applications for leave. Obviously his order decisions will not always be right. Hence the need to permit applications to set aside, where clearly unmeritorious applications have slipped through the net. There is also a need to be able to set aside orders made where there has been a failure by the applicant to observe the principle of utmost good faith, of which the present case is not an example. On the other hand, to permit this option to operate as a pre-emptive hearing of the substantive trial would defeat the purpose of the judicial review machinery for all the reasons given by McGuinness J and Bingham LJ.

[20] The consensus, therefore, throughout the authorities on the setting aside of the grant of permission is that while the court does retain the jurisdiction to reconsider the grant of permission it does so sparingly and in most instances it does so further to an ex parte deliberation on the question of permission where the defendant may not be not privy to or given the opportunity to be engaged with the proceedings. The court will even more sparingly utilize its power to set aside the grant of permission where the permission was granted at an inter partes hearing.

[21] In this case, the defendant has failed to convince me that the power to set aside the grant of permission should be exercised where the court dealt with the issue of delay and made a specific finding on it⁸. The defendant's complaint rests mainly on the purported adverse effects of a mandatory order on the administration of the Government's finance and its ability to pay other creditors should it be ordered to pay the sums owing to Mr. Dorset who has had judgment in his favour since January 1998. While a judge may revisit the grant of permission given at an inter partes, the complaint of delay was squarely in focus at the inter partes because it

⁸ See *Roland Browne v PSC SLUHCVP* 2010/0023

was quite evident that Mr. Dorset had received judgment in his favour for some time. It was also plain at the inter partes hearing that he was making his request after quite some engagement with the Government. I recognized that in granting or refusing delay because of this excessive lapse of time, issues concerning the competing interests and/or prejudice to both parties were in play. After considering both these matters, I ruled that

“On the question of delay, the court is concerned that the registrar’s certificate was issued since 16th September 1998. Counsel does acknowledge that there has been substantial delay in the filing of the application. He explains that even if there is delay, there is no prejudice to the respondent since this is an ongoing matter for which the Crown is still accountable. I note that the applicant has not let the matter rest. There is evidence of recent correspondence to the respondent regarding the applicant’s efforts to realize the fruits of the judgment. While I am concerned about the considerable delay, I have also formed the view that, leave ought to be granted given the substantial allegations of inaction on the money judgment which remains unpaid and the fact that proceedings for enforcement of money judgments cannot be instituted against the Crown in the normal course of things (CPR 59.7(1) and section 21 (4) of the Crown Proceedings Act, Cap. 74 of the revised laws of Grenada). The applicant is to remove the name of the Permanent Secretary from further proceedings.”

[22] The defendant’s complaint is merely asking me to revisit this issue without more. I find that it is not proper in this case to so do.

[23] Even if the court has jurisdiction to entertain a return to the grant of permission in this case, I find that the grant of permission should not be reversed due to the charge of delay. CPR 56.5 is the governing rule on delay in bringing administrative claims. It reads –

56.5 (1) In addition to any time limit imposed by any enactment, the judge may refuse leave or to grant relief in any case in which the judge considers that there has been unreasonable delay before making the application.

(2) When considering whether to refuse leave or to grant relief because of delay the judge must consider whether the granting of leave or relief would be likely to –

(a) be detrimental to good administration; or

(b) cause substantial hardship to or substantially prejudice the rights of any person.

[24] The Court of Appeal has provided guidance on the application of this rule. In **Tropical Distributors v Permanent Secretary, Ministry of Finance**⁹, our Court of Appeal reminded that what is at stake is promptitude and that –

“In determining whether there has been unreasonable delay, the judge should consider whether the granting of leave would be likely to be detrimental to good administration or cause substantial hardship to or substantially prejudice the rights of any person.”

[25] In particular what is determined to be good administration has also been helpfully illuminated¹⁰–

“Lord Diplock pointed out in O’Reilly v Mackman: The public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision. I do not consider that it would be wise to attempt

⁹ AXAHC VAP 2018/0007

¹⁰ R v Dairy Produce Quota Tribunal for England and Wales Ex p. Caswell [1990] 2AC 738

to formulate any precise definition or description of what constitutes detriment to good administration. This is because applications for judicial review may occur in many different situations, and the need for finality may be greater in one context than in another. But it is of importance to observe that section 31(6) recognises that there is an interest in good administration independently of hardship, or prejudice to rights of third parties, and that the harm suffered by the applicant by reason of the decision which has been impugned is a matter which can be taken into account by the court when deciding whether or not to exercise its discretion under section 31(6) to refuse the relief sought by the applicant. In asking the question whether the grant of such relief would be detrimental to good administration, the court is at that stage looking at the interest in good administration independently of matters such as these. In the present context, that interest lies essentially in a regular flow of consistent decisions, made and published with reasonable dispatch; in citizens knowing where they stand, and how they can order their affairs in the light of the relevant decision. Matters of particular importance, apart from the length of time itself, will be the extent of the effect of the relevant decision, and the impact which would be felt if it were to be re-opened.”

- [26] What then is the impact in this case? The defendant argues that it would be detrimental to the orderly payment of its more recent judgment creditors and would be deleterious to the proper administration of Government finances if it was ordered to pay Mr. Dorset the sums due to him on a judgment granted since January 1998. But with respect, this argument is deeply flawed for a whole host of reasons especially the fact that we are at this state of affairs through no prodigious failing on the part of Mr. Dorset. While I agree with the defendant that it would certainly redound to good administration if judgment debts owed by Government are resolved in a timely manner, Government was aware of its obligation to pay the debt to Mr. Dorset and it failed to meet the same notwithstanding numerous promises made to him. I must stress that the obligation to pay Mr. Dorset is a

continuing one. Thus it can hardly be the Government's answer that it is somehow emancipated from its continuing obligation to pay Mr. Dorset due to the length of time he took before approaching the court to lament Government's inaction.

[27] There may have been some sympathy for the Government's posture if this was the sort of case where the Government took a decision against paying Mr. Dorset, informed him of the same and thereafter Mr. Dorset took an unreasonable length of time to pursue a judicial review of the decision not to pay. However, there is uncontroverted evidence before this court that the Government continued to engage with Mr. Dorset and made several promises to pay this debt. Indeed Government paid a part of the debt. The present state of affairs may have been avoided if these part payments had persisted and the debt was liquidated. For my part, I am convinced that Mr. Dorset was enjoined at some earlier point than his 2018 approach to the court to treat the inaction of Government as a decision not to pay him. He would have had the registrar's certificate in hand since September 2016. But then I weigh the obvious prejudice to Mr. Dorset if his permission to approach the court for relief is set aside against the stated difficulties the defendant may encounter if the court grants a mandatory order to pay the debt. Against the latter difficulties I remind myself that the grant of a remedy in administrative claims is discretionary and in this regard, among other things, the court has the ability to order the defendant to pay this debt in installments¹¹. When all the factors just discussed are weighed including the evident prejudice to Mr. Dorset if the permission previously granted to pursue his present claim is set aside and also the need to maintain good administration, I find that notwithstanding the undue delay in bringing this claim to the court, the grant of permission should not be set aside. The defendant's set aside application is therefore refused. The defendant must pay to Mr. Dorset his costs assessed in the sum of \$1500.00.

¹¹ Jennifer Gairy v AG (PC) 29 of 2000 at para.31

[28] In closing I must express my regret to the parties for the length of time it took before they received a ruling on the set aside application which was filed since 11th June 2018. The application, affidavits and submissions were with the court office from that time. While I am entirely aware of and sensitive to the burdens attending the functions of the court office, it is quite extraordinary that it took until June 2020 for the documents to be sent to this court for a ruling. Unfortunately, the unusual lapse of time that ensued before this file was sent to the court for a ruling may have only served to compound the regrettable circumstances that have brought the litigants to this court.

Raulston LA Glasgow
High Court Judge

By the Court

Registrar