IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY

M.28/84

723

No Special Consideration

BETWEEN G

Appellant

(NAME OF APPELLANT SUPPRESSED)

A N D THE HOUSING CORPORATION OF NEW ZEALAND

Respondent

cited in Black v Fulcher [1988] 1 NZLR

Hearing : 13th June 1984

Counsel : Mrs H.W. Gray for Appellant
J. Smith for Respondent

Judgment : 13th June 1984

(ORAL) JUDGMENT OF BARKER, J.

This is an appeal against the conviction of the appellant in the District Court at Tauranga on 9th November 1983. The appellant was convicted on a total of 9 informations for alleged breaches of the Rent Freeze Regulations. The appeal is in respect of 7 of those convictions.

The learned District Court Judge fined the appellant and ordered her to pay costs. There is no appeal against sentence. He also suppressed the name of the appellant and of one of the witnesses. There is no appeal against that order; therefore, I consider that I must continue the order for suppression of name because there is no appeal, although, for an offence of this nature, I doubt very much whether, sitting at first instance, I should have suppressed the name of the appellant.

Although there was a great deal of evidence placed before the District Court and numerous submissions made to the Judge, the appeal has now come down to one basic issue. The following factual basis is necessary in order to understand the point at issue.

In the 7 informations on which the appeal is based, it is alleged that the appellant, on various dates between 17th October 1982 and 21st February 1983, accepted from tenants of a property at O Road, Mt Maunganui, a sum that was irrecoverable by virtue of Regulation 5 of the Rent Freeze Regulations 1982, namely, an increase in the rent of the premises. Various informations state various figures by which the rent was said to have been illegally increased. The informations as laid stated that the appellant had committed an offence under Regulation 6 of the Rent Freeze Regulations 1982 ("the 1982 Regulations"). These 1982 Regulations were repealed by Regulation 17(1) of the Rent Freeze Regulations 1983 ("the 1983 Regulations") which came into force on 14th June 1983.

The 7 informations in contention were sworn on 28th September 1983. It will thus be seen that, although the informations averred offences committed during the validity of the 1982 Regulations, they were sworn after the 1982 Regulations had been repealed by the 1983 Regulations.

Both the 1982 Regulations and the 1983 Regulations were made under the provisions of the Economic Stabilisation Act 1948 ("the Act"). Section 18(1)(a) of that Act creates an

offence for every person who "without lawful justification or excuse, acts in contravention of or fails to comply in any respect with any provision of this Act, or of any stabilisation regulations, or any direction, requisition, or condition given or imposed in this Act or in such regulations". "Stabilisation regulations" means "regulations made under the Act". (See Section 2 of the Act as amended in 1982.)

Section 18(4) of the Act states that, notwithstanding anything in Section 14 of the Summary Proceedings Act 1957, any information for an offence against that Act must be laid at any time within 3 years from the time when the matter of the information arose.

Regulation 6 of the 1982 Regulations creates an offence against these regulations (which means an offence against the Act) for any person who "stipulates for or demands or accepts for himself or for any other person, on account of any land, building, or other premises any sum that is irrecoverable by virtue of regulation 5 of these regulations". Regulation 5 forbids the recovery of rent in excess of that fixed by Regulation 3 which in effect froze rents to the level of rental being paid at 22nd June 1982, the date when the price and wages freeze was introduced as an "economic package" which included the Rent Freeze Regulations.

One other matter of note in the 1982 Regulations is Regulation 7; that gives a statutory right of recovery to a tenant who has paid rent which is deemed by the Regulations

to be excessive; but such recovery is limited to a period of 12 months after the date of payment. That is the only relevance of the period of 12 months, because the informations allege that the offence was committed within the space of 12 months last. As I have already noted, the limitation period for laying informations for an offence against the Regulations made under the Act is one of 3 years. So that the statement in the information relating to 12 months had no real point because of the extended time for filing enjoyed by those who enforce these Regulations.

The 1983 Regulations provided for a "thaw" in the rent freeze. They nevertheless created an offence under Regulation 13 similar to the offence created by Regulation 6 of the 1982 Regulations.

It was the submission of Mrs Gray, counsel for the appellant, both here and in the District Court, that the informations were nullities in that they alleged offences under Regulations which had been repealed. Counsel referred to a number of well-known authorities on what is or is not to be considered a nullity, including the decision of Mahon, J. in Police v. Walker, (1974) 2 N.Z.L.R. 419. In that case, the information before the learned Judge was considered a nullity and incapable of amendment. The learned Judge considered that it was unintelligible and did not disclose an offence. There are numerous cases on the same theme, some on one side of the line of nullity and some on the other side of mere irregularity. However, I do not think that it is necessary in this judgment

to examine the numerous cases in this particular area which would involve a consideration of authorities under Sections 43 and 204 of the Summary Proceedings Act 1957.

The learned District Court Judge, against the submissions of Mr Smith, who appeared in the Court below for the respondent, purported to exercise his power under Section 43 of the Summary Proceedings Act 1957 and amended the informations to show offences under Regulation 13 of the 1983 Regulations. It is here pertinent to note that no reference to the Act was made; therefore, the person receiving the information would not know the maximum penalty which he might receive on conviction. I shall return to this point later; the absence of that information is not, in my view, fatal to the life of the informations.

The effect of the District Court Judge's ruling was to give retrospective effect to the 1983 Regulations. The effect of his amendment was to say that the appellant had committed an offence under Regulations which were not in existence at the time of the alleged offence. Courts always lean against retrospective legislation in the criminal area and there is no justification, on a proper reading of the 1983 Regulations, for creating any retrospective criminal liability. It seems to me that whatever happens in this appeal, the amendment made by the learned District Court Judge cannot possibly stand.

The issue falls to be decided on the point whether it was competent for the respondent, the informant in the Court below, to allege a breach of Regulations in force at the time

of the alleged offence but repealed at the date of the life of the information.

In my view, it was competent for these informations to have been so laid. The decision of the Court of Appeal in R v. Duerkop (1915), 34 N.Z.L.R. 474 is directly in point. In that case, the respondent was convicted of indictments laid under one Act which had been repealed, but the offence complained of had been committed whilst the statute was in force. The Court of Appeal of 5 Judges held that the then equivalent of Section 20(h) of the Acts Interpretation Act 1924 operated to save the information and that provision gave a complete answer to the contention that the indictments were invalid.

Section 20(h) of the Acts Interpretation Act 1924 reads as follows:

> "Notwithstanding the repeal or expiry of any enactment, every power and act which may be necessary to complete, carry out, or compel the performance of any subsisting contract or agreement lawfully made, entered into, or commenced under such enactment may be exercised and performed in all respects as if the said enactment continued in force; and all offences committed, or penalties or forfeitures incurred, before such repeal or expiry may be prosecuted, punished, and enforced as if such enactment had not been repealed or had not expired."

Section 20(h) is one of a number of general provisions which have force subject to the opening words of Section 20 which read:

> "The provisions following shall have general application in respect to the repeals of Acts, except where the context manifests that a different construction is intended."

To consider whether a different construction was manifested by the context, I look at Regulation 17(2) of the 1983 Regulations which read as follows:

> "Notwithstanding the revocation of the Rent Freeze Regulations 1982 or the expiry of these regulations, the Rent Freeze Regulations 1982 and these regulations respectively shall be deemed to remain in force for the purposes of enabling any sum of money to be recovered or deducted under regulation 7 of the Rent Freeze Regulations 1982 or regulation 14 of these regulations."

In my view, that revocation provision does not manifest the intention on the part of the Governor-General-in-Council to say that all offences committed during the currency of the 1982 Regulations shall not be susceptible to informations laid after the date of expiry of the Regulations.

A similar situation was considered in a helpful decision of the late Mr A.M. Goulding in the Magistrates' Court (as it then was) in Murray v. Sutherland and Suckling (1940), 1 M.C.D. 534. In that case, as in the present, regulations were in force at the date of the commission of an alleged offence; they had been revoked before the information was laid. Following R v. Duerkop, the learned Magistrate held that the regulations permitted the information to be laid. He also dealt with a submission that the saving clause in those regulations manifested a contrary intention. The saving clause was in these words:

> "All matters and proceedings commenced under the regulations hereby revoked and pending or in progress at the commencement of these regulations may be continued, completed, and enforced under these regulations."

If the matter rested there, the learned Magistrate felt that the informations were bad since no proceedings had been commenced at the time of revocation. However, he considered that Section 20(h) of the Acts Interpretation Act 1924 and Duerkop's case operated to save the prosecution. He also dealt with a submission that the word "enactment" in the opening words of Section 20(h) does not cover the revocation of regulations. For reasons stated at pp.537-538 of his judgment, he concluded that it did in those circumstances.

I also have had to consider whether the word "enactment" applies to regulations, in the case of Elston v. State Services Commission (No. 3), (1979) 1 N.Z.L.R. 226, 227. I there noted the dictum of Henry, J. in Munro v. Auckland City, (1967) N.Z.L.R. 873, 874 where the learned Judge said:

> "The word "enactment" is of narrower import and should not be extended to mean the whole Act and regulations unless the context so requires."

In my view, the context certainly does require that "enactment" includes a regulation when the principal Act under which the regulations are made is concise in its provisions and clearly requires detail to be spelt out from time to time in stabilisation regulations. In fact, since its inception

the Economic Stabilisation Act 1948 has been used by successive Governments as a tool of economic management.

It seems that in the context of this particular Act, the word "enactment" in Section 20(h) of the Acts Interpretation Act must include regulations made under the Economic Stabilisation Act; I adopt with respect the reasoning of the learned Magistrate in Murray v. Sutherland and Suckling.

Mr Smith pointed out to me a decision of the English Court of Appeal to similar effect in R v. Fisher, (1969) 1 All E.R. 100.

It seems clear on the authorities that the informations were properly laid in the first place and that the learned District Court Judge should not have amended them in the way he did.

Accordingly, the appeal is dismissed. However, pursuant to my powers under Section 121 of the Summary Proceedings Act 1957, wherein I have all the powers of the District Court Judge, I may amend the convictions. I amend each of the 7 convictions, the subject of the appeal, to show "Regulation 6 of the Rent Freeze Regulations 1982" instead of "Regulation 13 of the Rent Freeze Regulations 1983". I also direct that the informations record Section 18(1)(a) and (3) of the Economic Stabilisation Act 1948. In my view, the informations should have included that reference. However, in the circumstances, on the authority of cases such as Venn v. Morgan, (1949) 2 All E.R. 562, that omission is not fatal.

Accordingly, the appeals are dismissed. The informations are amended as indicated and because there is no appeal, the suppression of the names of the appellant and the witness Mrs S , is continued.

Mr Smith asks for costs. Mrs Gray informs me that the appellant is legally aided, so there will be no order as to costs.

R.D. Barker J.

SOLICITORS:

Honoria Gray, Auckland, for Appellant.

Sharp, Tudhope & Co., Tauranga, for Respondent.