THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV: 2017-01890

IN THE MATTER OF THE JUDICIAL REVIEW ACT NO. 60 OF 2000

AND

IN THE MATTER OF AN APPLICATION FOR PERMISSION TO APPLY FOR JUDICIAL REVIEW

AND

IN THE MATTER OF THE DECISION OF THE COMPTROLLER OF CUSTOMS AND EXCISE TO SEIZE AND/OR DETAIN GOODS OF THE APPLICANT PURSUANT TO SECTION 219 OF THE CUSTOMS ACT, CHAPTER 78:01

BETWEEN

GARVIN HOLDER

Claimant/Applicant

And

THE COMPTROLLER OF CUSTOMS AND EXCISE

Defendant/Respondent

Before Her Honour Madam Justice Eleanor J. Donaldson-Honeywell

Appearances:

Jagdeo Singh, Keil Taklalsingh and Karina Singh, Attorneys at Law for the Claimant

Roshan Ramcharitar, Rachel Theophilus and Diane Katwaroo Attorneys at Law for the Defendant

Delivered on December 7, 2017

Judgment

I. Introduction

1. The Applicant seeks leave to apply for judicial review of the decision of the Comptroller of Customs ["the Respondent"] to seize his Trailer and Trailer Truck on 6 November, 2016. The application challenges the lawfulness of the seizure and continued detention of the Applicant's said goods without the initiation of forfeiture proceedings in relation to same. In particular he contends that the one month limitation period for notifying the Customs authorities of a claim to recover seized goods, prescribed at **Section 220(1) of the Customs Act Chap 78:01** ["the Act"] did not apply in circumstances where the goods were seized in his presence.

2. The Respondent, opposes the Applicant's application for leave on the following grounds:
    a. There is no arguable ground for judicial review with a realistic prospect of success because the plain literal meaning of Section 220(1) of the Act is that the Applicant's goods were automatically condemned in the circumstances where he did not claim them within the one month period;
    b. There are alternative remedies of application for intervention of his excellency the President and/or a Claim in detinue which should debar the Applicant from pursuing its Judicial Review Application;
    c. The Applicant has not acted with sufficient promptness in the filing of these proceedings. This is so the Respondent argues, because the Applicant delayed in applying for leave for several months more than the three month period from the date when grounds for the application first arose which is provided for in the **Judicial Review Act Chap 7:08 at Section 11(1).** The Respondent contends this was done without reasonable explanation.

II. Issues

3. The issues therefore are as follows:
    a. Whether the Applicant has an arguable ground for judicial review with a realistic prospect of success;

b. Whether there exists an alternative remedy which would debar the Applicant from pursuing Judicial Review; and

c. Whether the Applicant has acted promptly in the filing of this application and if not whether there was good reason for the delay.

III. The Applicant's evidence and Relief Claimed

4. The facts relating to the seizure, as summarized from the Applicant's Affidavit in support of this Leave Application, are as follows:

   a. On 6 November, 2016 the Applicant was contacted to provide a service using his trailer. The service for which he was hired was to receive and deliver a shipment at the port of Point Lisas. Arriving at the port around 1pm, the Applicant submitted documents obtained from a customs broker to the port clerk and proceeded into the loading area of the port. The shipment was loaded. Then, as the Applicant was proceeding to exit the port and make his way to the delivery site for the goods he was hired to deliver, he was intercepted by a customs officer.

   b. He was questioned later that day and the documents in his possession were inspected. He was then informed that there was a discrepancy in the importation documents relating to the shipment.

   c. The next day he was instructed to drive the trailer vehicle to the "CES" station in the customs building at Point Lisas and he was interviewed by the Financial Investigations Bureau. Thereafter, the trailer vehicle and trailer were seized and a notice of seizure dated November 6, 2016 was issued to him in writing by a Customs Officer.

   d. On or about 15 December, 2016 the Applicant sought the advice of his Attorney-at-Law regarding the seizure. The Attorney-at-law then sent a letter dated 11 January, 0217 as notice of the Applicant's intention to claim recovery of the trailer vehicle and trailer pursuant to Section 220 (1) of the Act.

   e. The Applicant was informed by letter dated 26 January, 2017 from the Comptroller of Customs that the letter from his Attorneys fell outside the one-month limitation

period during which written notice of a claim to recover seized goods could be made and therefore the trailer was deemed to be condemned.

f. By letter dated 30 January, 2017, the Applicant's Attorneys informed the Comptroller that he was an independent contractor and was unaware of the contents of the shipping container.

g. By letter of 15 March, 2017 the Applicant's Attorneys again wrote to the Comptroller indicating that section 220(1) upon which the Comptroller relied as the basis for the one month limitation period was misconstrued. The Applicant's Attorney's contended that the one month limitation did not apply.

h. On 24 March, 2017 the Comptroller replied to the Applicant's Attorneys confirming its position that seizure and continued retention of the seized items was lawful.

5. The Applicant filed the present application on 26th May, 2017 seeking leave to apply for Judicial Review so as to be awarded the following reliefs against the Respondent:

a. Declarations that:

- the decision of the Intended Defendant, on or around the 16th September 2016, to seize and/or detain the said goods belonging to the Intended Claimant, pursuant to Section 219 of the Customs Act Ch. 78:01 was done in breach of the Intended Claimant's right to be heard and/or in breach of natural justice in that the Intended Defendant did not afford to the Intended Claimant an opportunity to be heard and/or make representations prior to the said seizure or at all with respect to the reasons and/or basis and/or evidence and/or grounds upon which the said seizure was effected and founded.
- the procedure and manner which the Intended Defendant adopted with respect to the said seizure and continued detention of the said goods belonging to the Intended Claimant pursuant to Section 219 of the Customs Act Ch. 78:01 is an abuse of power and/or an exercise of power in a manner that is so unreasonable that no reasonable person could have so exercised the power.

- the continuing failure and/or refusal and/or omission and/or neglect of the Intended Defendant to institute forfeiture proceedings in relation to its seizure of one ERF Truck Registration Number TCE 3679 (inclusive of keys to said vehicle) along with trailer #TBG 1286 with one Flatrack GESU 7556660 in accordance with Section 220(1) of the Customs Act Ch. 78:01 is:
    i. unauthorized and/or contrary to law and further constitutes a failure to satisfy or observe conditions and/or procedures required by law and/or a breach of and/or omission to perform its statutory duty under Section 220(1) of the Customs Act Ch. 78:01.
    ii. in breach of the Intended Claimant's legitimate expectation to have such proceedings instituted.
    iii. in breach of natural justice and/or the Intended Claimant's right to be heard in that the said forfeiture proceedings would afford the Intended Claimant an opportunity to be heard in relation to the Intended Defendant's reasons and/or basis for the seizure of its goods.
    iv. in violation of the Intended Claimant's constitutional rights to due process of law and the protection of the law in that the Intended Claimant has been denied the opportunity to be heard and participate within the said forfeiture proceedings.
    v. undemocratic and thus illegal in that the said goods have been forfeited without the observance of due process of law.
    vi. in breach of the Intended Claimant's fundamental constitutional right to enjoyment of property and not to be deprived of same without due process, as enshrined under Section 4(a) of the Constitution of Trinidad and Tobago, wherein Section 220(1) is a direct manifestation of the due process as contemplated by Section 4(a).
    vii. in direct conflict with the policy of the Customs Act Ch. 78:01 in that the Intended Defendant failed to perform its express statutory duty as mandated by Section 220(1).

- The continuing failure and/or omission and/or neglect of the Intended Defendant to release the Intended Claimant's said goods is

    i. illegal, irrational, unreasonable, procedurally improper based on irrelevant considerations, null and void and of no effect.

    ii. unconstitutional in that it violates the Intended Claimant's constitutional right to the enjoyment of property and the right to not be deprived thereof except by due process of law.

    iii. disproportionate and/or not reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.

- The Intended Defendant's decision to forfeit the said goods without instituting forfeiture proceedings is illegal, unlawful and procedurally improper.

b. Orders of :

- Certiorari to bring into the High Court of Justice and quash the said decision of the Intended Defendant with respect to the seizure and continued detention of the said goods.
- Mandamus compelling the Intended Defendant to release and return to the Intended Claimant all of the items purportedly seized pursuant to the Notice of seizure dated the 16th September 2016 issued to the Intended Claimant.
- Or alternatively, of Mandamus compelling the Intended Defendant to initiate forfeiture proceedings with respect to the said goods pursuant to Section 220(1) of the Customs Act Ch. 78:01.

c. An award of Damages inclusive of exemplary and/or aggravated damages, costs and interest.

6. There being no dispute as to these facts put into evidence by the Applicant, the parties were directed to file submissions setting out arguments for and against the grant of leave.

7. The opposing respondent was directed to file the first submission and although there was no Affidavit evidence filed by the Respondent they informed the Court of additional facts in their written submissions. It was disclosed that two days prior to the 6 November, 2016 seizure of the Trailer, duffle bags containing US currency were found concealed in the shipment of plywood that was to be transported by the Applicant in his Trailer.

8. This additional information is however irrelevant to the Courts determination whether to grant leave for Judicial Review. Instead it was the submissions on both sides concerning interpretation of Section 220(1) of the Act that were critical to my decision. I have determined, for reasons hereafter explained, that leave will not be granted.

IV. Law and Analysis

9. The test for leave for judicial review, as submitted by both the Applicant and Respondent, was laid out in **Sharma v Brown-Antoine [2007] 1 WLR 780** as follows:

> *"the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy."*

10. The Applicant further outlines the decision in **Steve Ferguson, Ishwar Galbaransingh v AG CA 207/2010** as authority for the proposition that the test must be applied contextually to the nature of the challenge raised by the litigant and that the only cases which are *"wholly unmeritorious"* should be refused at the leave stage.

Arguable ground with a realistic prospect of success

11. The Applicant in this application essentially challenges the Respondent's decision to condemn/continue to detain his goods. The Respondent relies on **S.220(1) of the Customs Act, Chap.** as statutory authority for that decision. This section provides:

> *"**Whenever a seizure is made, unless** in the possession of or **in the presence of the offender, master or owner,** as forfeited under the Customs laws, or under any written law by which Officers are empowered to make seizures, **the seizing Officer shall give notice in writing of the seizure and of the grounds thereof to the master***

or owner *of the aircraft, ship, carriage, goods, animals or things seized, if known, either by delivering it to him personally, or by letter addressed to him, and transmitted by post to, or delivered at, his usual place of abode or business, if known; and* ***all seizures*** *made under the Customs laws or under any written law by which Officers are empowered to make seizures* ***shall be deemed and taken to be condemned,*** *and may be sold or otherwise disposed of in such manner as the President may direct,* ***unless the person from whom such seizure shall have been made****, or the master or owner thereof, or some person authorised by him,* ***within one calendar month from the day of seizure, gives notice in writing to the Comptroller that he claims the thing seized,*** *whereupon proceedings shall be taken for the forfeiture and condemnation thereof; but if animals or perishable goods are seized, they may by direction of the Comptroller be sold forthwith by public auction, and the proceeds thereof retained to abide the result of any claim that may legally be made in respect thereof." [Emphasis added]*

12. The Applicant's main argument is that where a seizure is made in the presence of the offender, master or owner, there is no requirement for the notice of claim to be made in writing one calendar month from the day of seizure. Counsel for the Applicant suggests that to construe the one month notice provision as a "rigidly formal requirement", would result in a citizen being permanently deprived of his property and would be contrary to the rule of law. To construe section 220(1) as allowing for this would, according to the Applicant, be inconsistent with the principles of purposive statutory interpretation.

13. Counsel for the Applicant submits, **citing R (on the application of UNISON) v Lord Chancellor [2017] UKSC 51**, that the court must interpret the text of an enactment in accordance with constitutional principles which underlie the text. They submit that rigidly requiring one month's notice before the right to challenge the seizure through forfeiture proceedings is denied would disproportionately impede the Applicant's access to the courts.

14. Counsel for the Applicant further contends that the mandatory requirement of a written claim by the owner is only activated where the goods *are not seized in the presence of the owner* in the same way that there is only required to be a written notice from the customs Officer in such an instance.

15. Further, the Applicant submits that the court should read procedural safeguards into the section to ensure attainment of justice. Counsel for the Applicant cites the judgment of Mendonça, J.A. in **Permanent Secretary, Ministry of Foreign Affairs; Patrick Manning Prime Minister of the Republic of Trinidad and Tobago v Feroza Ramjohn CA 71/2007**) at [46]:

> *"The Court may read into a statute the necessary procedural safeguards to ensure the attainment of justice. This is so even if the act sets out a procedure to be followed. In that case the Court* ***will require that procedure to be followed*** *and will import additional safeguards* ***if necessary*** *in the interest of justice."[Emphasis added]*

16. It is my finding that the Applicant's reliance on the learning from the above case is misplaced. This is so because what the Judgment explained was that the court must follow the procedure prescribed by statute and will only import additional safeguards if necessary in the interest of justice. The Applicant argues that the rigid application of section 220(1) would place an owner of seized goods in severe hardship where he fails to give notice within the requisite period as he would be denied due process in terms of forfeiture proceedings. However, it is clear as argued by the Respondent, that an owner in these circumstances will have alternate recourse in the form of detinue/conversion proceedings in order to recover any financial losses.

17. Counsel for the Respondent, in their reply submissions, cite the case of **Commissioners of Customs and Excise v Sokolow's Trustee [1954] 2 QB 336** which construes a comparable section of the UK Customs Consolidation Act 1876 as follows:

> *"Section 207 provides that unless within one month from the date of such seizure the master or owner or some person authorized by him gives notice in writing that*

he claims or intends to claim the things so seized, the seizures made shall be condemned and taken to be condemned and may be sold. In such circumstances no suit for condemnation by the court is necessary, because the forfeiture which was inchoate at the time of the seizure is completed by a condemnation which follows by operation of law, and the Commissioners of Customs are empowered to sell the goods and to pass a statutory title to them."

18. This interpretation of the section by the UK court suggests that condemnation takes place automatically upon the expiry of the one-month period, without notice being given. In my consideration, supported by the UK decision, the wording of the legislation is clear and unambiguous. It is apparent that an Officer effecting seizure must give notice in writing only where said seizure is made in the absence of the offender or owner. The purpose for this is clear i.e. for the owner to be made aware of the seizure. In the instant case there was strictly no need for the Customs Officer to give the Applicant a written notice of seizure of the items taken. However, the Officer's effort in so informing the Applicant is commendable.

19. The construction of the section put forward by the Applicant, that the requirement for the owner to submit a written notice of his claim on the goods within one month from the day of seizure does not apply where the goods are seized in the owner's presence, is unsustainable. Seizure in the presence of the owner does not automatically suggest that the owner will make such a claim. Section 220(1) plainly provides that the owner is required to make the claim in writing within one calendar month so as to forestall the automatic condemnation of his seized goods. There is no exception from this requirement for a person who was present when his goods were seized. There is no basis for reading such an exception into the statute.

20. The statute being clear on the procedure to be followed, the court is bound to uphold that procedure. The legislation is quite clear that the proceedings for forfeiture and condemnation that would allow the person whose goods were seized to be heard, shall only be taken where that person gives written notice within the requisite one month period.

Where no such notice is given there is no such procedure and condemnation automatically takes effect.

21. In my determination, therefore, the Applicant has no arguable ground for judicial review of the Respondent's decision. The Applicant in this case does not challenge the constitutionality of the statute but rather the Respondent's interpretation of it. Having found that the section is clear as to the procedure to be followed by the Respondent, the Applicant's application for leave for judicial review must fail.

Alternative Remedies and Delay

22. Having decided this application on the substantive ground there is no need to consider the procedural bars of delay and alternative remedy.

23. It is my finding however, that there was merit in the Respondent's submissions with regard to the availability of the alternative remedy identified. Had it been necessary to consider this issue, a Ruling in **CV 01698-2013 Castor v Comptroller of Customs** would have provided useful guidance. In Reasons delivered on June 25, 2013 Jones J, as she then was, explained that she refused leave *inter alia* because of the Applicant's unexplained failure to utilise the alternative remedy of recourse to the President. Similarly, in **C.A.CIV.S.188/2016 Bridgelal v Attorney General,** leave for Judicial Review was refused where the alternative remedy of a claim in detinue was available.

24. The issue of the Applicant's delay in applying for Leave was also a factor which I would have determined against the Applicant. This is so in that although the delay was not for a significant number of days beyond the three month period provided for in the Judicial Review Act, no good reason was given for not applying more promptly.

V. Conclusion

25. The Applicant has failed to satisfy this court that he has arguable grounds for judicial review with a realistic prospect of success. The Court is satisfied that the Applicant's case

is wholly unmeritorious, having regard to the plain and unambiguous wording of Section 220(1) of the Act. Therefore, the Applicant's application for leave to apply for judicial review fails.

26. It is HEREBY ORDERED the application for permission to apply for judicial review is dismissed with costs to be paid to the Respondent by the Applicant in an amount to be assessed by the Master if not agreed.

Delivered on December 7, 2017

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Eleanor J Donaldson-Honeywell J
Judge

Assisted by: Christie Borely JRC1