

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Application No. 10 of 2005.

IN THE MATTER OF section 36(1) of the Supreme Court of Judicature
Act, Chap. 4:01 of the 1980 Revised Laws of Trinidad and Tobago.

AND

IN THE MATTER OF an application by the Director of Public
Prosecutions pursuant to section 36(1) of the Supreme Court of Judicature
Act, Chap. 4:01 of the Revised Laws of Trinidad and Tobago for the revision of an
Order made at the Port of Spain Magistrate's Court, by Her Worship Ms. Ejenny Espinet
on the 15th day of September, 2005 in the proceedings on Information Nos. 6406 to 6425
of 2004 and 1874 to 1879 of 2005; Superintendent Maurice Piggott v. Steve Ferguson,
Ishwar Galbaransingh, Brian Kuei Tung, Raul Guitierrez, Ronald Birk, Eduardo Hillman,
Sadiq Baksh, Ameer Edo, Tyrone Gopee, Peter Cateau, Edward Bayley, Northern
Construction Limited, Calmaquip Engineering Corporation, Maritime Life (Caribbean)
Insurance Limited, Maritime General Insurance Company Limited, and
Fidelity Finance and Leasing Company Limited.

Between

The Director of Public Prosecutions

Applicant

And

The Senior Magistrate

Her Worship Ms. Ejenny Espinet

Respondent

PANEL: John J. A.
Mendonca J. A.
Weekes J. A.

APPEARANCES: Mr. Petersen S.C. and Ms. Greene for the Applicant

DATE OF DELIVERY: 6th February 2006

JUDGMENT

Delivered by A. Mendonca J. A.

1. This appeal raises an important point and it is this, whether a preliminary enquiry in respect of charges brought against a corporate entity may proceed notwithstanding that the corporation has not appointed a representative under the provisions of the Criminal Procedure (Corporations) Act Chap. 12:03 (the Act).
2. The appeal has come before this Court on an application by the Director of Public Prosecutions (the DPP) under Section 36 of the Supreme Court of Judicature Act Chap. 3:01 to set aside or vary the decision of a Magistrate made during a preliminary enquiry into certain charges brought against certain natural persons and bodies corporate. Among the latter are Maritime Life (Caribbean) Insurance Limited, Maritime General Insurance Company Limited and Fidelity Finance and Leasing Company Limited (the Companies).
3. The Companies although represented by Counsel at the preliminary enquiry have not appointed a representative under the Act. The enquiring Magistrate invited Counsel to address her as to whether the preliminary enquiry into the charges against the Companies could proceed notwithstanding that they have not appointed a representative. It appears that the Magistrate raised the issue on her own motion. After hearing Counsel, the Magistrate ruled that the preliminary enquiry could not proceed. The Magistrate was

of the opinion that the provisions of the Act do not “permit her to disregard the Indictable Offences (Preliminary Enquiry) Act Ch. 12:01”.

4. It seems that what the Magistrate was particularly concerned about and what influenced her in coming to her decision was section 16(2) of the Indictable Offences (Preliminary Inquiries) (the Preliminary Enquiry Act). We will set out hereunder section 16(1) along with section 16(2) so that the latter section may be better appreciated.

“16(1) When an accused person is before a Magistrate holding a preliminary enquiry, the Magistrate shall take or cause to be taken down in writing the evidence of the witnesses on the part of the prosecutor apart from each other, unless the Magistrate thinks it necessary or conducive to the ends of justice that any of the witnesses should be permitted or required to be present during the whole or any part of the examination of any of the other witnesses.

16 (2) The evidence of each such witness shall be given in the presence of the accused person, or, if taken in his absence shall be read over to the accused in the presence of the witness; and the accused person is entitled to cross examine him.”

5. The Magistrate took the view that the only way effect could be given to section 16 (2) is if the Companies appointed a representative under the Act, and since none was appointed she could not proceed with the preliminary enquiry.

6. We may say at the outset that we do not agree with the Magistrate. It seems to us that in coming to her decision, the Magistrate failed to have any regard to the purposes for which the Act was passed and came to a conclusion which would frustrate the Act rather than give effect to the intention clearly discernible from its provisions.

7. The Act contains provisions similar to provisions that were first contained in section 33 of the Criminal Justice Act, 1925 (UK). This Act was passed as a consequence of the decision in *R –v- Daily Newspapers Limited* [1922] 2 K.B. 530 where it was held that a company cannot be committed for trial on an indictment. Lord Goddard C.J. in *R –v- H Sherman Limited* [1949] 2 KB 674 in referring to the *Daily Newspapers Limited* case stated (at p. 649):

“ ‘Committal for trial’ is defined in s.27 of the Interpretation Act, 1889, which provides that: ‘In every Act passed after the commencement of this Act, the expression “committed for trial” used in relation to any person shall, unless the contrary intention appears mean, as respects England and Wales, committed to prison with the view of being tried before a judge and jury, whether the person is committed in pursuant of section twenty-two or of section twenty-five of the Indictable Offences Act, 1848, or is

committed by a court, judge, coroner, or other authority having power to commit a person to any prison with a view to his trial, and shall include a person who is admitted to bail upon a recognizance to appear and take his trial before a Judge and Jury.’ A company cannot be committed to prison or held to bail, and it was ruled in *R –v- Daily Mirror Newspapers Limited* that so long as the Grand Juries (Suspension) Act, 1917, was in force a bill could not be preferred to a court unless there had either been a committal for trial, an order of a judge, or (in the case of perjury) an order made under the Perjury Act.”

8. It was accepted by Counsel for the DPP that the position was similar here. Before the passing of the Act, a company could not be committed for trial on an indictment. The purpose of the Act was to remedy this.

9. Section 3(1) of Act provides as follows:

“Notwithstanding anything in the Indictable Offences (Preliminary Enquiry) Act, where a corporation is charged before a Magistrate with an indictable offence, the Magistrate may commit the corporation for trial by an order in writing empowering the prosecutor to make an application to the Director of Public Prosecutions to prefer an indictment in respect of the offence named in the order, or for any offence that in the opinion of the Director of Public Prosecutions is disclosed by the depositions and for

the purpose of any written law referring to committal for trial (including this Act) any such order shall be deemed to be a warrant of commitment for trial or sentence as the case may be.”

10. The Act provided that where a corporation is convicted of an offence, it is liable, where the offence is an indictable offence, in lieu of imprisonment that is prescribed as punishment for such offence or where no fine is prescribed, to be fined in an amount that is in the discretion of the Court (see s. 12). Section 15(1) of the Act provides that sections 28-37 of the Preliminary Enquiry Act which deal with committing an accused for sentence and bail do not apply to a corporation. The Act in the light of these provisions sought to clear the way for a corporation to be committed to trial on an indictment.

11. It is clear from section 16(2) of the Preliminary Enquiry Act set out earlier in this judgment that the evidence of a witness has to be taken in the presence of the accused or, if taken in his absence, read to him. Where a representative is appointed, by a corporation, the requirement under section 16(2) that the evidence must be taken in the presence of the accused or read to him is to be construed as a requirement that it be done in the presence of the representative or be read to him. This is as a result of section 5 of the Act which provides as follows:

“Where a representative appears before a Magistrate as provided in section 4, any requirement of any law that anything be done in the presence of the accused, or be read or said to the accused, shall be construed as a

requirement that that thing be done in the presence of the representative or read or said to the representative.”

12. This section does not explicitly state that where the corporation does not appear by a representative that the requirement to do or say anything in the presence of the representative does not apply (as can be found in the UK provisions, see for eg. s. 33 Criminal Justice Act, 1925, Schedule 2 to the Magistrates Court Act 1952 and Schedule 3 to the Magistrates Court Act, 1980) but we think it is clear that that is the intention of the Act.

13. The Act permits a corporation to appoint a representative and provides for the method of appointment (see s. 10). But it is noteworthy that this is a power to appoint and not a mandatory requirement. The corporation therefore may or may not elect to appear by a representative. Consistent with this, there are provisions in the Act that render the representative or the appearance of the representative not critical to the process.

14. To begin with, nothing in the Act renders a representative liable to fine or imprisonment for any offence for which the corporation is convicted (see s. 11). The Act provides at section 4 that where a corporation is charged before a magistrate with an indictable offence a representative of the corporation may on behalf of the corporation make a statement before the magistrate in answer to the charge. Again this is permissive and not something that must be done on behalf of the corporation. It may be done by the representative, of course, if he appears.

15. Section 4 further provides that the representative may consent or object to summary trial, or claim trial by jury. But if a representative does not appear, the Court may proceed by summary trial without the consent of the corporation (see s. 6). Not only does the Act provide that the consent of the representative to a summary trial is not necessary if he does not appear, but his appearance is not necessary for a trial either before the High Court or before a magistrate to proceed. This can be seen from section 8 which provides as follows:

“When a corporation is indicted for an offence or is charged before a Magistrate with an offence, the corporation may, on arraignment before the High Court or on being asked to plead by the Magistrate, as the case may be, enter in writing by its representative a plea of guilty or not guilty, and if either the corporation does not appear by a representative, or though it does so appear, it fails to enter any plea, the court shall order a plea of not guilty to be entered and the trial shall proceed as though the corporation had duly entered a plea of not guilty.”

16. If a representative is not necessary for the trial before the High Court or a magistrate it seems to us unlikely that the legislature would have intended his presence to be necessary for a preliminary enquiry to proceed.

17. In the case of a natural person, a magistrate may compel the appearance of the accused by issuing a summons or warrant (see s. 3 of the Preliminary Enquiry Act). If

the appearance of a representative were necessary for a preliminary enquiry we would have expected to see provisions making the appointment of the representative mandatory, the attendance of the representative at the preliminary enquiry necessary and enabling the magistrate to compel his attendance. But there are no such provisions. In the absence of such provisions, if the Magistrate were correct in her decision, it would be quite simple for a corporation to escape prosecution on an indictment. All that need happen is that the corporation not appoint a representative. This would defeat the purpose of the Act.

18. The construction of the Act must be approached with the intention to prefer a construction which would carry into effect its policy and objects rather than one which would defeat them. To require the appointment and appearance of a representative before a preliminary enquiry can proceed will have the singular effect of frustrating the Act. In our view section 5 of the Act which provides that any requirement of any law that anything be done in the presence of the accused or be read or said to the accused shall be construed as a requirement that that thing be done in the presence of the representative or read or said to the representative, is to be construed as meaning, consistent with the purpose of the Act, that where the representative does not appear, which includes a case where one is not appointed, that any such requirement does not apply.

19. We would therefore set aside the decision of the Magistrate and direct that the Magistrate proceed with the preliminary enquiry notwithstanding that the Companies have not appointed a representative under the Act.

Dated this 6th day of February 2006.

Stanley John
Justice of Appeal

Allan Mendonca
Justice of Appeal

Paula-Mae Weekes
Justice of Appeal