

8th April, 1986.

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Court of Appeal

Giggles Limited v. Attorney General

Judgment.

D.C. Calcutt, Esq., Q.C. (President): The Court is indebted to both Counsel in this case, who have addressed us in well prepared arguments, over a very wide ranging area of the Law. We are grateful for that, but we should make it plain at the outset that our decision in this case is limited to the facts of this particular case which is before us, and to the construction, as we see it, of Article 14, in particular paragraph (3), of the Housing (Jersey) Law, 1949, as amended, and our decision should not be taken as extending to a wider consideration of either that Law or any other laws of this Island.

In 1984, as a result of information obtained, it appeared that the appellant might, in 1981 and again in 1982, have committed contraventions of paragraph (1) of Article 7 of the Housing (Jersey) Law, 1949, as amended, by entering as lessor into transactions to which Part III of that Law applied without the consent of the Housing Committee. On the 2nd August, 1984, a Mr. D.J. Bisson, on behalf of the appellant company, made a statement to a Mr. Sugden, who I understand to be an assistant housing officer, the effect of which was to bring to the knowledge of Mr. Sugden, I emphasise Mr. Sugden, that there was sufficient evidence to justify proceedings in respect of the suspected contraventions. On the 9th August, 1984, a consent was issued on behalf of the Housing Committee, in respect of one of the transactions which was the subject matter of one of the alleged contraventions. On the 31st August, 1984, the Housing Committee received a report which was prepared by the Law and Loans Manager, who is a Mr. Connew, setting out the facts as understood by him, relating to the alleged contraventions. We have before us in our bundles of documents, which were prepared for our assistance, a report headed Housing Committee, 31st August, 1984, and there is this entry in the left hand column:

"Housing (Jersey) Law, 1949, as amended, prosecution (and certain references)",

and it says this:

"The Committee, having considered a report prepared by the Law and Loans Manager, summarizing information which had been received which had led to the suspicion that offences had been committed under the Housing (Jersey) Law, 1949, as amended, accordingly decided that the undermentioned should be referred to the Law Officers of the Crown for the appropriate action to be taken."

Thentthree names were set out of which one was the name of the appellant company.

There can be no doubt, it seems to me, that the facts giving rise to the alleged contraventions came to the knowledge of the Housing Committee on the 31st August. The question which arises in this case, in circumstances which I will presently make plain, is whether that knowledge is to be imputed to the Housing Committee at some date earlier than the 31st August, 1984, and in particular on the 9th August, which was the date on which the consent to which I have referred was issued.

I turn to the provisions of the Housing (Jersey) Law, 1949, as amended, and I think it is sufficient for my purposes if I read extracted parts from that Law. The preamble is in these terms:

"A Law to provide for the constitution of a Committee of the States, to administer matters relating to the housing of the population, to empower the States to acquire land by compulsory purchase for the purposes of housing, and to control sales and leases of land in order to prevent further aggravation of the housing shortage, sanctioned by order of His Majesty the Council of the fourth day of March, 1949."

Article 1 is a definition article, and the Committee is there defined to mean the Committee constituted in pursuance of Article 2 of that Law. I pass immediately to Article 2, which is in these terms:

" CONSTITUTION OF HOUSING COMMITTEE

(1) A Committee of the States, to be called the Housing Committee, shall be constituted for the purpose of exercising the powers conferred, and performing the duties imposed -

- (a) upon the Committee by this Law;
- (b) upon the Public Health Committee by the Dwelling-Houses (Rent Control) (Jersey) Law, 1946; and
- (c) upon the Special Committee constituted by virtue of an Act of the States of the twenty-sixth day of September, 1946;

and generally for the purpose of discharging such other functions relating to the housing of the population as may from time to time be deemed expedient.

(2) In consequence of the provisions of sub-paragraph (b) of paragraph (1) of this Article, in paragraph (1) of Article 1 of the Dwelling-Houses (Rent Control) (Jersey) Law, 1946, for the definition of "the Committee" there shall be substituted the following definition -

"the Committee" means the Housing Committee;" "

I now pass over Part II and Part III and come immediately to Article 14, and pass to paragraph (3) of that Article:

"Notwithstanding any enactment or rule of Law to the contrary, proceedings which may be taken against any person for an offence against this Part of this Law may be taken within the period of a year and a day from the date on which evidence, sufficient in the opinion of the Attorney General to justify the proceedings, comes to the knowledge of the Committee....."

and I think I can omit the remainder of that paragraph and read paragraph (4):

"For the purposes of paragraph (3) of this Article, a certificate under the hand of the President of the Committee as to the date on which such evidence as aforesaid came to the knowledge of the Committee shall be conclusive evidence thereof."

It appears from the copy of the Housing (Jersey) Law, 1949, which has been laid before us, that paragraphs (3) and (4) were added to the Law in 1966 by virtue of the Housing (Amendment Number 3) (Jersey) Law, 1966. In the course of her address to us, Miss Nicolle explained to us her understanding of the circumstances in which those particular provisions came to be introduced in to the Law, and in brief they were these: there was at common law in this Island a law to the effect that a prosecution would be time barred unless it was instituted within one year and one day of the date on which the offence was committed. In respect of housing matters it may be that there were matters which were not detected in sufficient time to enable prosecutions to be launched within the common law statutory period. It was accordingly for that reason, as Miss Nicolle explained to us on her understanding of the matter, that this provision was instituted, so that the period of time should run, according to the wording of the statute, from the time on which it came to the knowledge of the Committee that a contravention appeared to have occurred. It is to be noted that in paragraph (4) there is express reference to the President of the Committee, who is the person who is designated to specify the date on which the knowledge reached the Committee, and if he expresses his view about that matter that shall be conclusive evidence of that fact.

I now return to the facts of this particular case as we understand them to be. On the 19th August, 1985, an officer in the Viscount's Department served upon the appellant company a summons to appear before the Court on the 30th August, 1985, in respect of the three alleged contraventions. The appellant company entered a plea in bar, and the effect of that plea was to raise certain issues, which I can summarize in this way: if the requisite knowledge was to be imputed to the Housing Committee from the 9th August, to take the date on which the consent was issued, 1984, then the action was out of time. If it was not to be so imputed, then it was not out of time. In effect the issue which had to be determined by the Royal Court was as simple as that.

Speaking for myself, I can well see that there maybe occasions when a committee, and indeed the Housing Committee, acts by its duly authorised officer, and it may act under an expressly delegated power. Equally it does not seem to me, that there would not be times when there could not be such a delegation, and when it would be the Committee itself which would have to have requisite knowledge in order to take the necessary action. In the course of argument, I learnt from Counsel that in this Island the States of Jersey are closely in touch with the affairs of the Island, and that the Housing Committee itself plays a central role in the matters and the problems of housing which arise in this jurisdiction, and indeed that would be borne out, to my mind, by what is set out in the preamble of the Housing (Jersey) Law, 1949. In my view, it is not to be assumed that in all cases the officials who carry out the decisions of the Housing Committee are its alter ego, so that the knowledge of the officials is to be equated with the knowledge of the Committee. Now this seems to me to be particularly so in the case such as we have to consider, where it is alleged that there have been contraventions of the Housing Law. In my view, it is important that the Housing Committee should itself know of alleged contraventions, and that, as it seems to me, is reflected by the fact that a report was in fact made, in this case, to the Housing Committee on the 31st August, 1984. As I say, I am only concerned with the facts of this particular case, but having regard to the facts, and having regard to the terms in which Article 14 is drafted, it seems to me that it was the intention of the legislator that the date from which the time should run should indeed be the time when the matter came to the knowledge of the Committee, and it is not sufficient, in my view, that the knowledge should have come to an officer of the Committee. In my view, it is only when the knowledge comes to the knowledge of the Committee itself that time begins to run. Accordingly in those circumstances, it seems to me that the action which was instituted in 1985 was not time barred, and for my part, I would dismiss this appeal.

J.M. Collins, Esq., Q.C.: I agree. This seems to me to be a question of construction of a statutory provision, and we must bear in mind the fact that that statutory provision falls to be construed as at the date of when it was instituted. These provisions, Article 14(3) and (4), were introduced by the Housing (Amendment Number 3) (Jersey) Law, 1966, when the Housing Committee's functions were rarely exercised by officials acting on its behalf, if ever. We have been told that there has been an increase in delegation since that time, and indeed we have an instrument which is dated the 12th April, 1983, whereby certain matters are delegated by this Committee to its housing officer and to other officials. But it seems to me, that is of no assistance to us in determining the proper construction, as at 1966, of this particular Article. We know too that, on the only evidence available to us, the practice is to bring contraventions, or suggested contraventions, to the attention of the Committee, and we have the minute of the Housing Committee of the 31st August, 1984, which specifically sets out the following:

"The Committee, having considered a report prepared by the Law and Loans Manager, summarizing information which had been received which had led to the suspicion that offences had been committed, accordingly decided that the cases in question should be referred to the Law Officers of the Crown for the appropriate action to be taken."

Now when one turns to the provisions of Article 14, paragraphs (3) and (4), they refer in terms to the knowledge of the Committee, and when by paragraph (4), which was introduced by the same amendment as paragraph (3), we find it is for the President of the Committee to certify the date on which evidence came to the knowledge of the Committee, and when we find that that certificate is to be conclusive evidence, that seems to me to point to an intention on the part of the legislator that, whatever the position maybe under other provisions of this Law, so far as the knowledge of the Committee is concerned, it is the knowledge of the Committee itself to which reference is being made.

R.S. Alexander, Esq., Q.C.: I agree. I would not wish anything in this decision to be taken as giving general guidance on the nature or width of the powers of this Committee to delegate its functions to officials under any provision of the Housing (Jersey) Law, 1949. Mr. Bailhache in his attractive argument primarily founded his case on the fact that the Committee had delegated certain functions to officials, and in particular the function to grant certain consents. It was whilst carrying out his duty to fulfil a function of this kind, that Mr. Sugden acquired his knowledge of the facts which, it is accepted by Miss Nicolle on behalf of the Attorney General, was sufficient to give knowledge of the offence. Mr. Bailhache has thus urged that Mr. Sugden was acting on behalf of, or as the alter ego of, the Committee, and he has relied on cases such as *Carltona, Limited v. Commissioners of Work and Others* (1943) 2 All E.R. 560, as authority for the proposition that an official fulfilling the duty of a minister can be either acting as the minister or sufficiently acting on his behalf. But in my view, irrespective of the question of whether the relationship between the Committee and its officials is similar to the relationship between a minister and his officials, and there are indications of differences, irrespective of those differences, the Committee had not, as I read the evidence, delegated to officials any part of its function in connection with offences. I appreciate Mr. Bailhache's argument that the Committee does not take the decision to prosecute, but nonetheless under Article 14(3), the Committee is undoubtedly entitled to acquire for the purposes of prescription knowledge of the commission of facts, which can be judged to give rise to an offence. I therefore agree that there having been no delegation of any power of acquiring knowledge in that regard, the requisite knowledge in a matter of this importance is to be treated as that of the Committee.

I would, if I may, only add one word further. The point that mainly troubled me during argument was that this decision is essentially based on the construction of a statutory provision, and the effect of that statutory provision, the effect of Article 14(3), is to extend the period in which prosecutions can be commenced. Miss Nicolle helpfully told us that this extension was judged necessary by the legislature, because previously the identical limitation period of common law could have expired before there was any reasonable opportunity of an offence being discovered. In this area of the law that was understandably considered to be, by the legislature, an omission which required remedy. The effect of our decision is, however, that knowledge of an offence may be acquired by responsible officials, although the limitation period will not start to run until the Committee itself is informed of the facts. In the present case, there was a prompt report of the facts giving rise to the offence to the Committee. It is, however, important that it should be recognised, as I am sure it will be, that there should always be such a prompt report, for if for any reason a report were to be delayed, then the limitation period could be prolonged unduly and could be prolonged further than, as I understand the position, the legislature would have intended.