

BARBADOS

[Unreported]

**IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL**

Magisterial Appeal No. 6 of 2010

BETWEEN:

NATIONAL INSURANCE BOARD *Appellant*

AND

WESLEY GRANNUM *Respondent*

**BEFORE: The Hon. Peter D. H. Williams, The Hon. Sandra P. Mason, Justices of Appeal
and The Hon. Kaye C. Goodridge, Justice of Appeal (Ag.)**

2011: 15 March; 2012: 22 June

Mr. Trevor Gibbs and Mr. Michael Taylor for the Appellant

Mr. David Comissiong for the Respondent

JUDGMENT

PETER WILLIAMS JA

I. INTRODUCTION

- [1] The Magistrate for District ‘A’, Mrs. Barbara Cooke-Alleyne, dismissed the claim of the National Insurance Board (NIB) against Mr. Wesley Grannum for unpaid National Insurance contributions as a self-employed person. The Magistrate held that the claim was not filed within the statutory period. The NIB appealed the decision.
- [2] The facts are that Mr. Grannum was registered as a self-employed person with the National Insurance Office. *Regulation 4* of the *National Insurance and Social Security (Self-Employed Persons) Regulations, 1970* provides that every self-employed person shall pay contributions as stipulated by the Regulations, unless excepted from liability to pay by *Regulations 11* and *12*. Mr. Grannum was not excepted from liability. He failed to pay the requisite National Insurance contributions from April 2003 to December 2004 and was in breach of his statutory duty. The sums due and payable amounted to \$2,749.86.

II. THE PROCEEDINGS

- [3] On 13 May 2009, the NIB filed a claim in the Magistrate’s Court against Mr. Grannum for the said sum. The claim stated in paragraph 7 that by virtue of *section 43* of the *National Insurance and Social Security Act, Cap. 47* (the *NI Act*) the sums were recoverable as debts due to the NIB.
- [4] On 17 June 2010, Mr. Thompson, counsel for Mr. Grannum and Mr. Gibbs, counsel for the NIB, made the following submissions to the Magistrate:

Mr. Thompson – I am seeking to have the matter dismissed as it is out of time. The matter is grounded in s. 43 at paragraph 7 of the particulars of claim. That section said all summary matters must be brought within 3 years. This means it would have to have been brought by 2007.

Mr. Gibbs – S. 43 should be read in its entirety. S. 43(2) refers to an unpaid certificate issued by the Director of National Insurance. The matter before the Court was not brought as a certificate. With the certificate after 7 days of filing it has the effect of a judgment. This matter has been brought otherwise – 3 years refer to the certificate. It could not

have been Parliament's intention that National Insurance be otherwise than 6 years as it is in other civil matters.

Mr. Thompson – I have not seen an unpaid certificate in this matter. There is none on our file. This is a summary matter and should be dismissed.

III. THE STATUTORY PROVISIONS

[5] The *NI Act* as amended by the *National Insurance and Social Security (Amendment and Validation) Act, 2006-7* provides in *section 43* for civil proceedings to recover sums due to the National Insurance Fund, as follows:

“43. (1) All sums due and payable as **national insurance contributions** under this Act are **recoverable as debts** due to the Board and, without prejudice to any other remedy, may be recovered **summarily** as a debt due to the Board **in civil proceedings**.

(2) In the recovery of unpaid sums in pursuance of subsection (1), the Director, National Insurance may certify, in relation to the person who owes those sums, in a certificate called an unpaid national insurance certificate, the sums due and payable by that person.

(3) An unpaid national insurance certificate may be filed by the Director, National Insurance in the High Court or in a magistrate's court for District 'A', and it shall be registered in the court in which it is filed.

(4) Subject to subsection (6), a certificate referred to in this section has, after the expiration of 7 days from the date on which it is filed, the same force and effect as a judgment of the court in which it is registered in favour of the Board against the person named in the certificate for the sum specified in the certificate and also for

(a) interest on that sum at the rate of 1 percent per month calculated for each month during which any amount of national insurance contributions remained unpaid on the largest amount of national insurance contributions that were due and unpaid during any time in that month; and

(b) all reasonable costs, including court costs and charges incurred in recovering the sums owed.

(5) Proceedings may be taken on an unpaid national insurance certificate as if it were a judgment of the court in which it was registered.

(5A) Contributions due shall until paid, be a charge on the property and assets of the employer in respect of which they are owed, and that charge shall rank equally in

relation to all debts referred to in section 10M of the *Bankruptcy and Insolvency Act, 2001* and prior to all other liens and demands as affecting the property and assets.

(6) Where an unpaid national insurance certificate is filed by the Director, National Insurance in the High Court or in a magistrate's court for District 'A', the Director, National Insurance shall, without delay, deliver a copy of the unpaid national insurance certificate to the person to whom that certificate relates and, if the copy of the certificate is not so delivered within seven days from the date of the filing, then subsections (4) and (5) cease to have effect with respect to that certificate.

(7) Proceedings for the summary recovery of national insurance contributions may notwithstanding anything in any Act to the

contrary, be brought at any time within 3 years from the time when the matter complained of arose.” (Emphasis added.)

[6] The *Limitation of Actions Act, Cap. 231* (the *Limitation Act*) provides for “Sums Recoverable under Statute” in *section 18*, the marginal note to which reads “Limitation: statutory recoveries”, as follows:

“18. (1) No action to recover any amount of money that is recoverable under any enactment may be brought after the expiration of 6 years from the date on which the cause of action accrued.”

IV. THE MAGISTRATE’S DECISION

[7] On 17 June 2010, the Magistrate dismissed the case and gave her reasons for decision. She quoted *section 43(1)* and *(7)* of the *Act* as the relevant subsections and held that subsection *(7)* explicitly states that the timeline for summary matters is 3 years and that this matter was filed in May 2009 in excess of 3 years. She also held that *section 43(2)* to *(6)* is not relevant to this matter because the subsections refer to an unpaid National Insurance certificate.

V. THE APPEAL

[8] On 13 July 2010, the NIB filed an appeal. Mr. Gibbs revised the grounds of appeal in his oral submissions to a single ground that the Magistrate erred in law by: (a) applying *section 43(7)* to limit the NIB to 3 years to institute the action; (b) finding that the provisions of *section 43(1)* and *(7)* limit the time for bringing the action to 3 years contrary to *section 18(1)* of the *Limitation Act*; (c) failing to hold that *section 43(1)* is permissive and without prejudice to any other remedy; and (d) holding that the ordinary summons filed by the NIB was out of time.

[9] Mr. Gibbs submitted that *section 43(2)* was made pursuant to *section 43(1)* whereby the NIB can recover unpaid sums by filing an unpaid national insurance certificate either in the High Court or the Magistrate’s Court for District “A”. He further submitted that it

was this procedure that might have been brought within 3 years of the time when the debt arose. However, he stated that a claim either in the High Court or the Magistrate's Court other than by way of a national insurance certificate could be brought before the expiration of 6 years from the date on which the cause of action arose, in accordance with *section 18* of the *Limitation Act*. He further stated that "once the Director chooses to use that certificate, then he is limited to 3 years" but "where the sum is owed for over 3 years, you cannot use the unpaid certificate which limits the time for bringing such action to 3 years". The appellant's position was that the NIB could file a claim within 6 years but not an unpaid certificate. In summary, an unpaid national insurance certificate could be filed either in the High Court or the Magistrate's Court for District "A" within 3 years but a claim in the High Court or the Magistrate's Court must be filed within 6 years.

- [10] Mr. Taylor supported Mr. Gibbs' submissions by stating that "where the sum is owed for over 3 years, you cannot use the unpaid certificate by reason of *section 43(7)* which limits the time for bringing such action to 3 years" but "I do not see that section as limiting the Director to bring all actions within 3 years especially where the action is still within *section 18* of the *Limitation Act*". Mr. Taylor confirmed that the policy of the NIB is to file an unpaid national insurance certificate if the recovery is within 3 years and to file a court claim if the recovery is more than 3 years but less than 6 years from the date the claim arose.
- [11] Mr. Comissiong submitted that the statutory provisions must be given their plain meaning. He stated that the clear meaning of *section 43* is that proceedings to recover sums due to the NIB may not be brought any time outside of the 3 year limit "notwithstanding anything in any Act to the contrary". He continued that "the only possible meaning and purpose is that the legislation was setting up a 3 year limitation period and I think that this is common ground between the appellant and the respondent. The legislation is not restricting the term summary civil proceedings to proceedings involving an unpaid certificate." Mr. Comissiong was therefore quite certain that *section 43(7)* applied to the civil proceedings before the court and that notwithstanding *section 18* of the *Limitation Act* the 3 year period applied to the case.

VI. DISCUSSION

- [12] *Section 43(1)* provides for the recovery of national insurance contributions which may be recoverable summarily as a debt due to the NIB. It is not disputed that the instant claim in the Magistrate’s Court constitutes a summary recovery of a debt in civil proceedings. The limitation period of 3 years in *section 43(7)* applies to proceedings for the summary recovery of national insurance contributions. The wording in *subsections 43(1)* and *(7)* both relate to summary recovery of national insurance contributions. It follows that we agree with the decision of the Magistrate that the effect of *section 43(7)* is to create a limitation period which governs a claim made under *subsection 43(1)*. The claim was obviously brought outside the said period.
- [13] We are of the view that *section 43(2)* pursuant to the general power to recover given in *section 43(1)* merely provides one method of recovery of national insurance contributions i.e. by way of an unpaid national insurance certificate. *Section 43(2)* to *(6)* sets out the procedure for the operation and enforcement of the certificate. Contrary to the submissions of counsel for the NIB and in agreement with the Magistrate, the provisions in relation to a national insurance certificate are not relevant to this case. It would therefore be wrong to interpret the limitation period in *subsection (7)* as being applicable only to the certificate but not to summary recovery of contributions generally.
- [14] The *Limitation Act* commenced on 1 October 1997, 21 years after the *NI Act* commenced on 4 July 1966. The *Limitation Act* does not repeal the limitation period provided for in the *NI Act*. On the contrary, the *Limitation Act* saves the limitation period in the *NI Act*. Although not cited to us, *section 61* of the *Limitation Act* provides what is described in the marginal note as a “saving” in the following terms:

“61. **This Act does not apply**

(a) **to any action ... for which a period of limitation is prescribed by or under any other enactment; or**

(b) ...” (Emphasis added.)

It is therefore reasonably clear that the provision in section 43(7) of the *NI Act* is not affected by the provision in *section 18* of the *Limitation Act*.

- [15] Apart from *section 61* there is a rule of statutory interpretation that a general provision in a statute does not derogate from a specific provision in the same or another statute. The rule is expressed by the Latin maxim *generalia specialibus non derogant*. *Francis Bennion* in his book “*Bennion on Statutory Interpretation*”, *Fifth Edition (2008)* explains the maxim at *page 306* as follows and at *page 1164*:

“Where the literal meaning of a general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one. Accordingly the earlier specific provision is not treated as impliedly repealed.

The general provisions of the *Limitation Act* cannot derogate from the specific provisions on limitation in the *NI Act*.

VI. DISPOSAL

- [16] The appeal is therefore dismissed and the NIB is ordered to pay Mr. Grannum’s costs. When the case was dismissed in the Magistrate’s Court no mention was made of costs and there has been no appeal on costs. Nevertheless, Mr. Grannum is entitled to his costs also in the Magistrate’s Court. We should quantify the costs both here and below.
- [17] The power to award costs in the Magistrate’s Court is provided for in *section 103* of the *Magistrate’s Courts Act, Cap. 116A*. However, no civil procedure rules have been made in relation to costs under the *Act*. It is the function of the Rules Committee of the Supreme Court to make rules with respect to costs both in the Supreme Court and the Magistrate’s Courts. The Rules Committee derives its powers in this regard from *section 268* of the *Magistrate’s Courts Act, Cap. 116A* and *section 82* of the *Supreme Court of Judicature Act, Cap. 117A*. It is the Committee’s duty to ensure that the rules are kept up to date.
- [18] The *Magistrate’s Courts (Civil Procedure) Rules, 1958* were made under the *Magistrates Jurisdiction and Procedure Act, Cap. 116*, which was repealed by *Cap.*

116A. Nevertheless, the **1958 Rules** would still be in effect by reason of **section 30(3)(a)** of the **Interpretation Act, Cap. 1**, which preserves statutory instruments under repealed legislation so that they have “the like effect” under the substituted legislation. **Order 20** of the **1958 Rules** contains a Table of Fees and Costs which provides for attorney-at-law’s costs in the sum of \$30.00 for retainer and preparatory work and \$250.00 for appearance and conduct of the case, making a total of \$280.00. These fees and costs are fifty years old and now represent derisory amounts.

[19] The quantification of appeal costs is provided for in **Part 65** of the **Supreme Court (Civil Procedure) Rules, 2008 (CPR)**. The costs are prescribed in accordance with the scale in Appendix B to **Part 65**.

The amount of the claim was \$2,749.86. The amount of costs to be paid is calculated in accordance with the percentage specified in Appendix B or 30% of \$2,749.86 i.e. \$824.95. The costs must be limited to two thirds of \$824.95 i.e. \$549.96 (**Part 65.13**). The respondent would therefore be entitled to costs of \$549.96.

[20] We therefore order that the total costs of \$829.96 (\$280.00 + \$549.96) and VAT if applicable be paid within 28 days of the date of this decision and if not paid by the expiry of the said 28 days the costs are thereafter to bear interest at the rate of 6% per annum from the expiry date until paid.

Justice of Appeal

Justice of Appeal

Justice of Appeal (Ag.)