

IN THE SUPREME COURT OF  
THE TURKS AND CAICOS  
ISLANDS CIVIL

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW PURSUANT TO  
ORDER 53, r3 OF THE RULES OF THE SUPREME COURT, 2000

BETWEEN



1. DAVID SIMPSON
2. SHARON
3. MARLON
4. DANIEL DAVIS
5. KETHLINE
6. SYLVIA

Applicant

and

FORTIS (TCI) LIMITED

Respondent

BEFORE THE CHIEF JUSTICE, THE HON. MRS. JUSTICE  
RAMSAY-HALE Mr. Chal Misick of Misick Gardiner for the  
Applicants Mr. Guy Chapman of Savory & Co. for the  
Respondent Heard on 16 July 2018

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NOTE OF *EX TEMPORE* RULING ON APPLICATION FOR

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By motion dated 26 June 2018 and amended on 9 July 2018 to add a claim for interim Applicants seek leave to move for Judicial Review of the refusal by the Respondent, Fortis (TCI) Limited ("Fortis") to supply electricity to premises owned by Mr. Simpson and tenanted by the other Applicants. The facts relied on are set out in the to rely on an affidavit sworn by Mr. Simpson in support of an earlier application for an which is not entitled in the present proceedings in breach of Ord 41 r1.<sup>2</sup> He was rely on the affidavit in order to progress the matter and avoid further delay. At the end of the hearing the Court gave a brief *ex tempore* judgment granting the Applicants leave to seek judicial review on the ground that the application raised an issue of significant public interest, certain interim relief was granted and Mr. Chapman's

I now reduce the Court's reasons to writing to assist Counsel **with the** preparation of draft Orders for my consideration and to provide a note of the reasons **for the** consideration of the Court of Appeal in the event that Mr. Chapman appeals against this **Court's** decision to refuse him leave to appeal.

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<sup>1</sup> CL 63/2018 *David Simpson and Others v Fortis (TO)*

3. By way of brief background to this application, I set out the following facts: In 2015, consequent upon an inspection conducted at Mr. Simpson's premises, Fortis alleges that they discovered an illegal connection which they disconnected. Mr. Simpson was subsequently prosecuted for having obtained an illegal supply of electricity to his abstracting

In June 2017, the case was dismissed by the Chief Magistrate and Mr. Simpson and his subsequently applied for a supply of electricity at the premises. In July 2017, Fortis staff not to process any of the applications for supply. As a result of Fortis's stance, Mr. lost tenants and he continues to experience a high turnover of tenants at the premises, tenant who applies for a supply of electricity for the individually metered rental units is refused by Fortis. This has affected his ability to earn rental income and service his and he is at risk of losing his property to the

In his continued efforts to get electricity supplied to the premises for his tenants and Simpson sought the intervention of the Electricity Commissioner but to

Mr. Simpson now applies to the Court for an Order quashing Fortis's decision not to supply the premises with electricity on the ground that it is breach of their statutory of the Electricity Ordinance and

At the hearing of the application for leave, Mr. Chapman's submitted that leave should be refused on the ground that the application was out of time and the Applicants had given no reason for the delay. He asserted that the effective decision was the one taken by Fortis to disconnect Mr. Simpson's supply in 9 July 2015 and that the present

8. Mr. Misick in reply submitted that the decision to disconnect Mr. Simpson's supply in 2015 is not the decision which is being challenged on review. Rather, it is Fortis's continued refusal to supply Mr. Simpson with electricity subsequent to and despite his acquittal and its continued refusal to supply his tenants, against whom there are and have been no criminal proceedings, with electricity supply to their individually
9. Order 53, rule 4(1) provides that an application for leave to apply for judicial review shall be made promptly and in any event within three months from the date on which grounds for the application first arose, unless the Court considers that there is good reason for extending the period within which the application shall be made.
10. No application for extension of time was made and there was no explanation in the papers for the delay. Rather, Mr. Misick sought the Court's indulgence in response to Mr. Chapman's application and from the Bar table explained that Mr. Simpson had decided to await the outcome of the appeal brought by the Crown against the decision of the Chief Magistrate but nothing had happened in the year since it was filed and in the interim he had sought the intervention of the Electrical Commissioner before deciding to seek Judicial Review. Mr. Misick also said further that new tenants continue

11. The explanation tendered by Counsel from the Bar table was hardly satisfactory but that said, the Court considered that the issue raised in the application was one of significant public interest as it concerns the limits of the statutory duty of the power company to supply electricity to householders or their tenants. Or to put it another way, of its right to refuse to supply. In addition, the Court found there was no bar to extending time as no third party rights have accrued that could be adversely affected

The Court was satisfied that there was an arguable case that Mr. Simpson and/or his entitled under section 11 to be supplied with electricity and granted leave to move for judicial review of Fortis's decision not to supply them with electricity.

In respect of the three applicants currently residing in the premises: David Simpson, Sharon Cohen and Kethline Silver, the application for interim relief was granted, directing Fortis to applications for electrical supply and, upon each of the applicants satisfying the statutory conditions for the connection of electrical services to their premises, to electricity without

Costs

DATED THIS 19<sup>TH</sup> DAY OF JULY

CHIEF JUSTICE

