

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

HCVAP 2007/001

BETWEEN:

ROSALIND WILLIAMS

Appellant

and

LENNOX CREESE

Respondent

Before:

The Hon. Mde. Janice George-Creque
The Hon. Mr. Michael Gordon, QC
The Hon. Mr. Davidson Baptiste

Justice of Appeal
Justice of Appeal [Ag.]
Justice of Appeal [Ag.]

Appearances:

Mr. Emery Robertson for the appellant
Ms. Nicole Sylvester, Dr. Linton Lewis, Patina Knight and Andreas Coombs for the respondent

2009: October 7;
2010: January 25.

Civil Appeal – Order striking out statement of claim – Whether leave to appeal required - section 32 Supreme Court Act, Cap. 18

JUDGMENT

- [1] **GEORGE-CREQUE, J.A.:** When this appeal came on for hearing before the court, it was noted that the appeal arose following an application to strike out which was successful. The court, having of its own initiative raised the issue of whether or not leave was required, gave directions for the filing of written submissions on the question which, if leave was required, may be dispositive of the appeal. Written submissions were submitted.

- [2] The learned Master, on 20th November 2006, in a written decision struck out claim No. 415 of 2006 on the basis that the matter raised was res judicata and also that the claim was an abuse of process.
- [3] The appellant filed Notice of Appeal on 4th January 2007. Under CPR 62.1(2) this appeal would fall within the definition of a procedural appeal based on the “Application Test”¹.
- [4] This appeal does not fall within the exceptions for leave as set out in section 32 of the **Eastern Caribbean Supreme Court (St. Vincent & the Grenadines) Act** Cap. 18. Accordingly, leave to appeal was required before an appeal could be brought.
- [5] No leave to appeal was sought and none was obtained. Mr. Robertson stated that the order was a final order in the sense that the order striking out the statement of claim brought finality to the proceedings and as such no leave was required. He was obviously applying the order or “results” test rather than the “application” test which latter test this court has said time and again is the correct one to apply in deciding whether proceedings are interlocutory or final. Barrow JA at paragraph 19 in **McDonna’s** case puts it succinctly this way:
- “The application test says that the court considering the question whether an order was interlocutory or final must look at the application pursuant to which the order was made. If, whichever way the application was decided that decision would have brought an end to the issue in litigation, the decision given on that application is a final order. If, on the other hand, the proceedings would not have ended if one side as opposed to the other side won, the order is not a final order but is an interlocutory order.”
- [6] Clearly, had the learned master refused the strike out Application the matter would not have ended but would have proceeded to trial.
- [7] Mr. Robertson then sought to rely on the wide provision contained in section 29 of the **Supreme Court Act** which states as follows:
- “Notwithstanding the provisions of any law or any rule of court to the contrary, an appeal shall lie as of right to the Court of Appeal ... from

¹ [See: Oliver McDonna –v- Benjamin Richardson AXA -Civil Appeal No. 3 of 2005 per Barrow JA. Para. 19]

judgments or orders originating by summons in chambers and interlocutory judgments or orders of judges of the High Court, whether adjudicated upon in chambers or in open court and whether at first instance or on appeal, and the Court of Appeal shall have jurisdiction to hear and determine all such appeals”.

- [8] When section 29 is read with section 32 which requires leave, except for the categories of matters expressly stated therein, the two sections appear to be in conflict with each other. It is this very conflict or inconsistency that the Privy Council decisively resolved in respect of these very provisions in the **Supreme Court Act of St. Vincent and the Grenadines**, in the case of **Owens Bank Ltd. v. Gerard Cauche and Others**.² In that case the Privy Council stated thus:

“Section 31[*read sec. 32*] introduced for the first time a detailed framework for civil appeals from the High Court. It sets out in detail the classes of cases in which leave is required and those in which leave is not required. The phrase in section 28 [*read sec. 29*] “an appeal shall lie as of right” seems to their Lordships to have been a voice from the past originally designed to emphasise the existence of a right of appeal at a time when no detailed framework had yet been worked out. Their Lordships are accordingly of the view that section 31(2) [*read sec. 32*] is the leading provision and that section 28, [*read section 29*] in so far as it provides that an appeal shall lie as of right from an interlocutory judgment or order, must give way to it.”

- [9] This disposes of the point made by Mr. Robertson. The result is that leave to appeal was required. No leave was obtained. The Appeal is accordingly a nullity and is hereby dismissed.
- [10] The costs on the dismissal of the Notice of Appeal is fixed in the sum of \$1,500.00

I concur.

I concur.


Janice George-Creque
Justice of Appeal


Michael Gordon, QC
Justice of Appeal [Ag.]


Davidson Baptiste
Justice of Appeal [Ag.]

² Appeal From The Court of Appeal of Saint Vincent and The Grenadines, [1989] 1 W.L.R. 559