

ANGUILLA

IN THE COURT OF APPEAL

HCVAP 2006/008

BETWEEN:

EDWIN MC LAURENCE HUGHES

Appellant/Applicant

and

LA BAIA LIMITED

Respondent

Before:

The Hon. Mr. Hugh A. Rawlins
The Hon. Mde. Ola Mae Edwards
The Hon. Mr. John Carrington

Chief Justice (Ag.)
Justice of Appeal (Ag.)
Justice of Appeal (Ag.)

Appearances by way of Written Submissions:

Dr. John Roberts, QC, with him Ms. Jenny Lindsay for the Appellant/Applicant
Mr. Kenneth Porter, with him Ms. Michelle Smith for the Respondent

2008: June 16.

Civil appeal - Application to vary order of single judge of the Court of Appeal refusing application for extension of time to file amended notice of appeal or leave to rely on amended notice of appeal – whether the Full Court could vary the order under “the slip rule” – rule 42.10(1) of CPR 2000 – whether appellant prejudiced by the court’s refusal to permit the amendment of the notice of appeal

A judge of the High Court found that a contract for the sale of land existed between the appellant and the respondent. The judge accordingly ordered specific performance of the contract by the appellant. The appellant, who was the defendant in the High Court proceedings, appealed. He subsequently applied, inter alia, for an order for an extension of time to file an amended notice of appeal, or, in the alternative, for leave to rely on further grounds of appeal. A single judge of the Court of Appeal, while granting the other orders prayed for in the application, stated “[t]he other aspects of the application are denied.” Those “other aspects” were apparently those which sought the extension of time to file the amended notice of appeal or leave to rely on further grounds of appeal. The appellant applied to the Court to vary the order of the single judge so as to permit him to file an

amended notice of appeal. Counsel for the appellant contended that the decision of the single judge did not clearly dismiss the application to file the amended notice of appeal. They, accordingly, asked the Court to clarify the decision of the single judge.

Held, dismissing the application to vary the order of the single judge and ordering the appellant to pay the costs of the respondent, that:

- (1) In the circumstances of this case, the Court of Appeal has no authority to clarify the decision of a single judge, under rule 42.10(1) of the Eastern Caribbean Supreme Court **Civil Procedure Rules 2000** or otherwise, on an application to vary the order of the single judge.
Saint Christopher Club Ltd. v Saint Christopher Club Condominiums and others, Saint Christopher and Nevis Civil Appeal No. 4 of 2007, 15th January 2008, followed.
- (2) There was nothing in the amended notice of appeal which appeared to add anything to the appeal, which could not be subsumed under the existing grounds of appeal such that would render the refusal of the application to file an amended notice of appeal or to rely on further grounds of appeal prejudicial to the appellant. Further, the manner in which the appellant has conducted the appeal proceedings thus far threatens to delay the hearing of the appeal in a timely manner, to the possible prejudice of the respondent.

JUDGMENT

[1] **RAWLINS, C.J. [AG]:** The application for consideration herein was filed on behalf of the appellant/applicant, Mr. Hughes, on 15th April 2008. He applied for an order in the following terms:

1. This application be listed as urgent business;
2. This application be listed before the Full Court of Appeal at the Dominica sitting on 24 or 25 April 2008;
3. The Order of the Honourable Acting Justice of Appeal Mr. Errol Thomas of 22 January 2008 be varied pursuant to Rule 62.16(4) to allow the Appellant to amend his Notice of Appeal filed on 14 July 2008;
4. Leave be granted to the Appellant to file the amended Notice of Appeal pursuant to Rule 62.4(7) **CPR 2000** within 7 days of order;
5. There be relief from sanctions;
6. Costs in the appeal;

The application was supported by an affidavit of even date deposed by Mr. Hughes.

- [2] The Full Court of Appeal considered the application on written submissions at the request of counsel for the parties. This court gave an oral decision at its sitting in St. Lucia on 16th June 2008. That decision, which commenced with a brief background to the application, is hereby delivered in writing.

Background

- [3] In a judgment delivered on 2nd June 2006, George-Creque J ordered Mr. Hughes to execute and deliver to the respondent (“the company”), instruments of transfer in respect of a parcel of land in Anguilla. This order was made pursuant to documents which the learned judge construed as constituting an agreement for the sale of the land. The judge also issued an injunction restraining Mr. Hughes, whether by himself, his servant or agents, from carrying on any construction activities whatsoever on the said land. The judge ordered Mr. Hughes to bear the costs of the proceedings to be assessed by reference to US\$23,500.00, the purchase price of the land, pursuant to rule 65.5 of **CPR 2000**.
- [4] In her judgment, George-Creque J found, *inter alia*, that the Limitation Act did not apply to the claim. She held that in any event the claim was made within the applicable period of limitation to the extent that the Limitation Act applies to the claim for damages. The learned judge also found that two documents which contained agreements for sale of the land were not illegal as formed or as performed. The judge further found that these agreements and ancillary documents constituted a valid and binding agreement for the sale of the land. The judge granted the company, the claimant in the High Court proceedings, an order of specific performance.

- [5] Mr. Hughes appealed against the judgment and the order of the judge on eight grounds. The Appeal was filed on 14th July 2006. Solicitors for Mr. Hughes received the transcript in November 2007. On 22nd December 2007 they applied for an extension of time to file their Record of Appeal and skeleton argument. In an order dated 31st December 2007 time was extended for the filing of these items.
- [6] On 14th January 2008, Mr. Hughes applied for a further order to extend the time stipulated in the order of 31st December 2007 for the filing of the Record of Appeal and skeleton arguments. He also applied for an extension of time to file an amended notice of appeal. In the alternative, he sought leave to rely on further grounds of appeal.
- [7] On 22nd January 2008, Errol Thomas JA (Ag) made an order on this application. The citation to the order stated that he was satisfied as to the reasons given by solicitors for Mr. Hughes for extending the time for filing the record of appeal or core bundle and the skeleton arguments. Accordingly he extended the time for the filing of these documents to 31st January 2008. His order then stated, in paragraph 3, “[t]he other aspects of the Application are denied”. “The other aspects of the Application” were those that sought an extension of time to file the amended notice of appeal or, alternatively, sought leave to rely on further grounds of appeal.
- [8] Various applications in these appeal proceedings came before the Full Court (Sir Brian Alleyne, CJ (Ag.); and Barrow and Rawlins JJA (as they then were) sitting in Anguilla on 17th March 2008. One of these applications, which was filed by Mr. Hughes on 5th March 2008, was in identical terms to the aspects of the application of 14th January 2008 that Thomas JA (Ag) denied in his order of 22nd January 2008. It sought an extension of time to file an amended notice of appeal or leave to rely on further grounds of appeal. The Full Court dismissed this application on the ground that it was an abuse of the process of the court. Based on other

applications that were heard on 17th March 2008, the Full Court extended the time for the respondent to file skeleton arguments to 7th April 2008. The Full Court further granted the respondent company's application to order Mr. Hughes to give security for the company's costs in the sum of US\$15, 000.00. This security was to be provided on or before 1st May 2008. The appeal proceedings were stayed pending the security for costs being given. The court also gave ancillary directions.

The present application

- [9] Mr. Hughes' application of 15th April 2008 is premised on his contention that while Thomas JA (Ag) dismissed his application to rely on further grounds of appeal, he did not clearly dismiss or specifically deny the alternative application to amend the notice of appeal. Counsel for Mr. Hughes asked the court to note that this is not an application for the same order that the full court dismissed on 17th March 2008, but an application to the Full Court specifically to vary the order that Thomas JA (Ag) made on 22nd January 2008.

Reasons for decision

- [10] I do not think that the contention by counsel for Mr. Hughes is sustainable. This is because it is apparent in his order that Thomas JA (Ag.) specifically identified 2 aspects of Mr. Hughes' application, which was before the learned Justice of Appeal. On the one hand he identified the application to extend time for the filing of the Record of Appeal and the skeleton arguments and granted this aspect of the application. On the other hand, he identified the application to extend the time to file an amended notice of appeal, or, alternatively, to grant leave to Mr. Hughes to rely on further grounds of appeal. Thomas JA (Ag.) refused to grant the latter aspects, when in paragraph 3 of his order he refused "the other aspects of the application".

[11] I have noted that in their written submissions filed on 26th May 2008, counsel for Mr. Hughes included submissions “on behalf of the Appellant in Support of the Appellant’s Request for Clarification of Justice of Appeal Thomas’ Reasons for Decision dated 14th April 2008 ...” At paragraph 10 of the written submissions counsel stated that they received the said reasons for decision on 15th April 2008. This was the same date on which they filed the application to vary the order. In those submissions counsel insisted that the reasons for decision did not clearly state that Thomas JA (Ag.) had actually denied the application to extend time to file the amended notice of appeal. Counsel contended, in effect, that the reasons of the judge evince an indication that he granted the extension of time. Counsel invited the Full Court to clarify the reasons for decision by Thomas JA (Ag) to reflect that he had in fact granted leave to file the amended notice of appeal.¹ Counsel urged this court, consequentially, to amend the order of 22nd April 2008 “to correct the accidental omission which the Court of Appeal has power to do of its own initiative pursuant to Rule 42.10(1)”.²

[12] Rule 42.10(1) of **CPR 2000**, which is usually referred to as “the slip rule” states:

“The Court may at any time (without an appeal) correct a clerical mistake in a judgment or order, or an error arising in a judgment or order, from any accidental slip or omission.”

[13] In the first place, however, there is no proper application before this court that invites the clarification of the reasons for decision by Thomas JA (Ag). Such a prayer is not an aspect of the application of 15th April 2008 or of any other application filed in this court in accordance with the rules. In the second place, I am not aware of any authority that this court has to clarify reasons given by a single judge of this court. In any event it is clear that rule 42.10(1) of **CPR 2000** is not applicable in the circumstances of this case. In **Saint Christopher Club Ltd. v Saint Christopher Club Condominiums and others**³ this court held that the slip rule may only be used to correct genuine clerical errors or accidental slips or

¹ See paragraph 11 of the written submissions.

² See paragraph 12 of the written submissions

³ St. Christopher and Nevis Civil Appeal No. 4 of 2007, 15th January 2008.

omissions in a perfected order. Mr. Hughes' application does not invite this court to correct any such slip or omission.

[14] In my view the forgoing provide sufficient reasons for dismissing Mr. Hughes' application of 15th April 2008. I note, however, that counsel for Mr. Hughes has contended that he would be prejudiced if he is not permitted to rely on an amended notice of appeal.

[15] The amended notice of appeal, which counsel for Mr. Hughes exhibited in these proceedings state as follows, so far as it is relevant:

"2. Details of –

(a) Findings of fact challenged:

- (i) That the Defendant was aware of the circumstances giving rise to the Charge on the land;
- (ii) That George Richardson's signature on the blank Transfer Form was witnessed by Mr. Ian Donaldson Mitchell Q.C.;
- (iii) That there was a date for completion of the Second Agreement

(b) Findings of Law Challenged:

- (i) That the Agreements were not illegal.
- (ii) That the Agreements were valid.
- (iii) That the Agreements were enforceable
- (iv) That the Limitation Act does not apply to the Claims.
- (v) The extent that the Limitation Act applies in respect of the Claim for damages then same is within the applicable period of limitation
- (vi) That the Claimant is entitled to specific performance of the Agreements.

3. Grounds of Appeal

- (a) The Learned Judge misdirected herself and erred in law and fact in determining that the Agreements were not illegal as formed or as performed.
- (b) the Learned Judge misdirected herself and erred in law and fact in determining that the Agreements coupled with the ancillary documents constituted a valid and binding agreement for the sale of the land: Registered Section: West End Block: 17709B Parcel: 23
- (c) The Learned Judge misdirected herself and erred in law and fact in not addressing her mind to the unenforceability of the Agreements.

- (d) The Learned Judge's findings, that the Agreements were enforceable, are against the weight of evidence.
- (e) The Learned Judge misdirected herself and erred in law and fact in finding that
 - (i) the Limitation Act does not apply to the claims;
 - (ii) in determining that to the extent that the Limitation Act applies in respect of the Claim for damages then the same is within the applicable period of limitation.
- (f) The Learned Judge misdirected herself and erred in law and fact in finding that the evidence gave her the reasons to give judgment for the Claimant.
- (g) The Learned Judge misdirected herself and erred in law and fact in determining that the Claimant is entitled to an injunction preventing building works on the land and specific performance of the Agreements.
- (h) That the Appellant reserves the right to amend and/or add to the Grounds of Appeal following receipt of the Transcript.
- (i) Defense Counsel failed to call certain key witnesses and that was prejudicial to the Defendant's case.
- (j) Although Defense Counsel never called the Defendant to be present in Court, yet, the Learned Judge criticized the Defendant for not being present; when as a matter of fact, the most crucial witness to the Claimant's case, Mr. Rosario Spadaro (the owner of La Baia) was not present in court and was not criticized by the Learned Judge. It was for Mr. Spadaro, the owner, to aver and prove the Claimant's case; but he was not in court to give evidence.
- (k) The judge misdirected herself in law and fact in refusing to hear and adjudicate upon evidence involving the validity of the Charge noted on the Land Register concerning Registered Section: West End Block: 17709B Parcel: 23.
- (l) The Learned Judge failed in law to deal fully with the Alien land Holdings Regulation Ordinance No. 12 of 1976 which is the substratum of this case because it is the condition upon which any alien can own land if granted permission by the Government of Anguilla. The laws of Anguilla is the **LEX SITUS**, that is the law of the country in which the land is situated.
- (m) The Claimant's case fails because of the bizarre circumstances, the confusion, the muddle in the case as reiterated by the Learned Judge in her Judgment [paragraph 1]; and the contradictory and unsatisfactory evidence of both Ms. Cheri Batson and Mr. Charles Davis.

4. Order Sought

- (i) That the Decision of the Learned Judge be set aside.
- (ii) That the Costs below and in the appeal be paid by the Respondent.

(iii) Any further order that the Court deems fit.

5. Any specific power which the court is asked to exercise:

- (i) to draw inferences from the facts pursuant to Section 30(1)(b) of the Eastern Caribbean Supreme Court Act E15;
- (ii) to call further evidence of Rosario Spadaro (compellable witness for the Claimant/Respondent) and Hubert B. Hughes (compellable witness for the Defendant/Appellant) pursuant to Section 31(b) of the Eastern Caribbean Supreme Court Act E15."

[16] In my view there is nothing in the amended aspects of this notice of appeal⁴ that may be properly relied upon, which appear to add anything that could not be subsumed under the existing grounds of appeal. It further seems to me that the manner in which these appeal proceedings have been conducted thus far threatens to delay the hearing of the appeal in a timely manner to the prejudice of the respondent.

Result and order

[17] Premised on the foregoing, I would dismiss Mr. Hughes' application, which was filed herein on the 15th April 2008. In the absence of circumstances that militate against the application of the general rule that cost shall be awarded to the successful party, I would order Mr. Hughes to pay to the respondent company \$3,000.00 cost in this application.

Hugh A. Rawlins
Chief Justice (Ag.)

I concur.

Ola Mae Edwards
Justice of Appeal (Ag.)

I concur

John Carrington
Justice of Appeal (Ag.)

⁴ Those aspects which are underlined.