

GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.10 OF 2007

BETWEEN:

[1] **THE ATTORNEY GENERAL OF GRENADA**
[2] **PC MARVIN REGIS #74**
[3] **PC HENRY #699**
[4] **IMMIGRATION OFFICER #367**
[5] **PC VELON WILLIAMS**

Applicants/Intended Appellants

and

ANDY REDHEAD

Respondent

Before:

The Hon. Mde. Justice Ola Mae Edwards

Justice of Appeal [Ag.]

Appearances:

Mr. Raulston Glasgow, Senior Legal Counsel of Attorney General's Chambers
for the Applicants/Intended Appellants

Ms. Celia Edwards of the Law Office of G.E.D Clyne for Respondent

2005: June 17.

JUDGMENT

[1] **EDWARDS, J.A. [AG.]:** On the 2nd April 2007, the Applicants/Intended Appellant filed an application for Leave to Appeal along with a Notice of Appeal, against the Case Management Order of the learned Master, made on the 22nd March 2007.

[2] By Notice filed on the 25th April 2007, Counsel, Ms. Celia Edwards of the Law Office of G.E.D. Clyne, representing the respondent, objected to the application for leave to appeal. One of the 2 grounds of objection was that the application ought to be supported by an affidavit which the applicants have failed to file.

- [3] At a Case Management Conference before a Single Judge, pursuant to CPR 62.14(2), Rawlins J.A. on the 29th May 2007, made the following Order:

"DIRECTIONS

UPON READING the Notice of Application for Leave to appeal and a Notice of Appeal filed herein on the 2nd day of April 2007, and a Notice filed on behalf of the Respondent on 25th April 2007 objecting to the application for leave to appeal;

AND UPON noting that the application for leave to appeal is not supported by affidavit setting out the reason why leave should be granted as required by the Civil Procedure Rules 2000;

HIS LORDSHIP, THE HON. HUGH A. RAWLINS, JUSTICE OF APPEAL in accordance with Part 62.14 of the Civil Procedure Rules 2000 on the 29th day of May, 2007 has DIRECTED THAT:

1. The application for leave to appeal is hereby struck out because it discloses no grounds for granting leave to appeal.
2. Solicitors for the applicants/Intended Appellants shall within 21 days of today's date, show cause why the notice of appeal filed herein on 2nd April 2007 shall not be struck out.
3. The matter shall be listed on the Chamber list for 12th June 2007.

Dated the 29th day of May, 2007
BY THE COURT....."

The reason for Appealing

- [4] The applicants' application for leave arose from the order of the Master dated 22nd March 2007, made at a Case Management Conference which was not attended by the applicants on their lawyer. The learned Master heard an oral application by the claimant, to dismiss the applicants' Re amended Defence filed herein on the 7th day of March 2007, because of non-compliance with a previous Order made on the 1st March 2007.
- [5] The previous Order had directed the applicants to amend their defence to exclude allegations and also to comply with Part 10.6(2) of the CPR 2000 with respect to the personal injuries alleged to have been suffered by the Claimant.

- [6] The learned Master ordered:
- “that the Re-amended Defence is hereby dismissed and judgment is entered for the claimant with damages to be assessed upon application and prescribed costs...”

Showing Cause

- [7] The application has been referred to me as a single judge for further case management. I note that learned Counsel, Mr. Glasgow has endeavoured to show cause by his submissions filed on the 13th June 2007. He has pointed to CPR 62.2(2) and CPR 11.8(3) to justified his conclusion that the filing of evidence in support of an application for leave to appeal is not a mandatory requirement.
- [8] CPR 62.2(2) states that “an application for leave to appeal must be in writing and set out concisely the grounds of the proposed appeal.” CPR 11.8(3) states that “the applicant need not give evidence in support of an application unless it required by a – (a) court order; (b) practice direction; or (c) rule”.
- [9] The Civil Procedure Rules 2000 are not the only Rules of Court governing appeals. The Court of Appeal Rules 1968 Rules co-exist with the CPR 2000, **THOUGH SOME OF THE 1968 Rules have been apparently impliedly repealed by specific provisions in the CPR 2000.**
- [10] Section 31 of the West Indies Associated States Supreme Court. (Grenada) Act Cap. 336 enacts :
- “The jurisdiction of the Court of Appeal so far as it concerns practice and procedure in relation to appeal from the High Court shall be exercised in accordance with the provisions of this Court and rules of Court, such jurisdiction so far as concern practice and procedure in relation to appeals from the High Court, shall be exercised as nearly as possible as may be in conformity with the law and practice for the time being in force in England-
- (a) In relation to criminal matters, in the Court of Appeal (Criminal Division);
- (b) In relation to civil matters, in the Court of Appeal (Civil Division).”

- [11] Rule 13 (1) of the 1968 Rules reads:
- "13.(1) where an appeal lies by leave only, any person desiring leave to appeal within fourteen days either by Notice of Motion or by Summons (whichever is appropriate) and such appeal shall be made to the Court or to the Court below or to the Judge who made the Order; the period of fourteen days shall run from the date of the decision against which leave to appeal is sought."
- [12] Rule 29 (1) of the 1968 Rules refers to applications for leave to appeal in forma peris while Rule 29 (2) states:
- "Any other application under these rules shall be made by way of summons or motion or notice. Such application shall be supported by affidavit, a copy of which shall be served with the summons or Notice of Motion."
- [13] Since Rule 29 (2) of the 1968 Rules mandates that supporting affidavit evidence must be filed with the application for leave to appeal such application that is made by Notice in Form 6 under CPR 11.6(1), must be made subject to the 1968 Rule 29(2) mandatory requirement.
- [14] In an erroneous assumption for Counsel to submit that the Court ought to ensure that the evidence is filed on case management. An application seeking to overturn a case management decision has a high threshold to cross. It has been emphasized since the introduction of the CPR "that this Court should not interfere with case management decisions made by a judge [or master] who has applied the correct principles, and who has taken into account the matters which should be taken into account and left out of account matters which are irrelevant, unless satisfied that the decision is plainly wrong that it must be regarded as outside the generous ambit of the discretion entrusted to the judge [or master]¹: Applicants must therefore ensure that adequate affidavit evidence is before the Court to attain their desired goal.

¹ (Per Lord Justice Chadwick in *Royal & Sun Allain Insurance PLC and Another v T & N Limited*[2000]EWCA Civ.1964 para.38)

[15] Applicants seeking permission to appeal must recognise that leave to appeal will only be given where the Court considers that an appeal would have a realistic rather than a fanciful prospect of success or that there is some other compelling reason why the appeal should be heard. The Court requires affidavit evidence to propel it to that conclusion.

[16] The request by Counsel for the application for leave to appeal be reinstated cannot be allowed. The Order of Rawlins J.A must stand.

The Notice of Appeal

[17] The Notice of Appeal can survive only if the order of the Master is a final order.

[18] The Order was made on an interlocutory oral application. It has not totally and effectively decided the rights of the parties without a determination of substantive issues that arose on the claim. Damages are yet to be assessed. Though liability has been disposed of, none of the issues on the claim has been determined.

[19] I have applied both the “application test” and the ‘order test” referred to by Sir Dennis Byron C.J. in **Pirate Cove Resorts Ltd and another v Euphenea Stephens and Others**²; and explained by Rawlins J.A. in *Nevis Island Administration v La Copprete Du Naivre J31 and Others*³. Both tests prove that the Masters order is an interlocutory Order on a procedural order requiring the leave of the Court.

[20] In the absence of leave, the Notice of Appeal filed on the 2nd April 2007 is a nullity and must be struck out.

² (Civ. App. No.11 of 2002 (2003) St. Vincent & the Grenadines at par 9)

³ Civ. App. No 07 of 2005; St Christopher & Nevis at paras 15-16)

[21] I therefore strike out the Notice of Appeal on the ground that it is a nullity. I also order that the applicants/intended appellants do pay the costs of the respondent on the application for leave to appeal, to be agreed on by the parties. In the absence of argument, the costs must be assessed by the Court.

Ola Mae Edwards
Justice of Appeal [Ag.]