

ST.KITTS-NEVIS

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 5 of 1991

BETWEEN:

(1) ALCEO ZULIANI
(2) TRANSAMERICA INVEST (ST.KITTS) LIMITED
(3) THE ROYAL ST.KITTS CASINO LIMITED

Appellants

and

VERNON S. VEIRA

Respondent

Before: The Rt. Hon. Sir Vincent Floissac - Chief Justice
The Honourable Mr. Justice D.Byron, J.A.
The Honourable Mr. Justice N.J.O. Liverpool, J.A.

Appearances: Mr. T. Byron for the Appellants
Mr. L. Moore for the Respondent

1992: September 30;
October 2.

JUDGMENT

FLOISSAC, C.J.

This is an application by the appellants for leave to appeal to Her Majesty in Council from a judgment (the appellate judgment) which was delivered by this Court on the 23rd March 1992 and whereunder this Court dismissed the appellant's appeal against a judgment (the original judgment) delivered by Singh J. on the 25th March, 1991. The application purports to have been made on the authority of section 99(1)(a) of the Constitution of Saint Christopher and Nevis which provides that:

"An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases -

- (a) final decisions in any civil proceedings where the matter in dispute on the appeal to Her Majesty in Council is of the prescribed value or upwards or where the appeal involves directly or indirectly a claim or question respecting property or a right of the prescribed value or upwards;....."

Counsel for the respondent opposed the application on the ground that (1) the appellate judgment is interlocutory and is not

a final judgment and (2) the matter in dispute on the appeal to Her Majesty in Council is not of the prescribed value (i.e. \$5,000.00) or upwards. I shall deal with the second ground first. This invites me to examine the original judgment of which the appellate judgment is a mere reflection and in the light of which the validity of the second ground is required to be considered.

The original judgment is a judgment determining the appellants' liability to the respondent for legal, professional and other services rendered by the respondent to the appellants. With regard to the amount of that liability, the learned judge said:

" I do not intend to quantify these sums as the Plaintiff wishes this Court to do in prayer 1 of his Claim but I will make the Order asked by the Plaintiff in the alternative Claim. I order that the Plaintiff recover from these defendants with respect to their individual liabilities as found by me, such sums as may be found due to the plaintiff upon taxation by the Registrar of this Court of individual bills of costs to be filed by this plaintiff with the Registry of this Court. Such sums as are finally arrived at upon such taxation to be incorporated in this order as part of the Judgment of this Court.

I also order interest on such quantified sums at the rate of 6% per annum from 11th July 1988 until paid.

The Defendants individually will pay the Plaintiff his costs of this action in so far as it relates to each defendant to be taxed certified fit for two Counsel if not agreed.

What I sought to do in this matter is to adjudicate on the issues raised in the pleadings on the admissible evidence before the Court, and to secure to the plaintiff, a solicitor of this Court and an Officer of this Court, proper remuneration and no more for the work he did as Solicitor for the defendants. It is within this Court's jurisdiction to control remuneration to be paid to officers of the Court and

to ensure that they receive no more than they are entitled to."

Having regard to the learned Judge's judgment (the original judgment), the question to be decided is whether "the matter in dispute on the appeal to Her Majesty in Council is of the prescribed value (\$5,000.00) or upwards." On that question, I derive assistance from two decisions of the Privy Council.

The first is the decision in **Allan v Pratt (1888) 13 App. Cas. 780**. There the **Earl of Selborne** (delivering the opinion of the Board) said at p.781:

" Their Lordships are of opinion that the appeal is incompetent. The proper measure of value for determining the question of the right of appeal is, in their judgment, the amount which has been recovered by the plaintiff in the action and against which the appeal could be brought. Their Lordships, even if they were not bound by it, would agree in principle with the rule laid down in the judgment of this tribunal delivered by Lord Chelmsford in the case of **Macfarlane v Leclaire** that is, that the judgment is to be looked at as it affects the interests of the party who is prejudiced by it, and who seeks to relieve himself from it by appeal. if there is to be a limit of value at all, that seems evidently the right principle on which to measure it. The person against whom the judgment is passed has either lost what he demanded as plaintiff or has been adjudged to pay something or to do something as defendant. It may be that the value to the defendant of an adverse judgment is greater than the value laid by the Plaintiff in his claim. If so, which was the case in **Macfarlane v Leclaire** it would be very unjust that he should be bound, not by the value to himself but by the value originally assigned to the subject-matter of the action by his opponent. The present is the converse case. A man makes a claim for much larger damages than he is likely to recover. the injury to the defendant, if he is wrongly

adjudged to pay damages, is measured by the amount of damages which he is adjudged to pay. That is not in the least enhanced to him by the fact that some greater sum had been claimed on the other side."

The second case is **Meghji Lakhamski & Brothers v Furniture Workshop (1954) 1 A.E.r. 273**. There the Privy Council was required to interpret article 3(a) of the **Eastern African (Appeal to Privy Council) Order in Council 1951** which was similar to section 99(1) of the **Constitution of Saint Christopher and Nevis** and which provided that an appeal should lie as of right from any final judgment of the Court of Appeal "where the matter in dispute on the appeal amounts to or is of the value of £500 sterling or upwards, or where the appeal involves directly or indirectly some claim or question to or respecting property or some civil right amounting to or of the said value or upwards". Delivering the opinion of the Board, Lord Tucker said (at p.274):

" It is quite possible that a case may fall in whole or in part within more than one limb of art. 3(a) and it will suffice for an appellant to show that it comes within any one. it was laid down by this Board in **Macfarlane v Leclaire** that "the value of the subject-matter in dispute", under corresponding legislation relating to Canadian appeals, must be determined by looking at the judgment as it affects the interests of the party who is prejudiced by it and who seeks to appeal. the same test was applied in **Allan v Pratt** to a case of an appeal from a judgment awarding damages for personal injuries, it being held that the value was the sum awarded and not the sum claimed. More recently, in **Lipshitz v Valero**, it was held that, where a tenant appellant had been evicted from a plot of land valued at £50 on which he had constructed a building at a cost of £450, the true test was whether it was worth £500 to him that the Rent Restriction Ordinance should be held to give him protection against an order to vacate the land leaving on it a building which had

cost him £450 to erect. The first two of these cases were dealing only with the value of "the subject-matter in dispute", and it would appear that in the last case also it was the first limb of the article that was, primarily at any rate, under consideration. Their Lordships have no doubt that under whichever limb of the article any case may fall the "value" must be looked at from the point of view of the appellant, with the result that an appeal may sometimes lie where the landlord is the appellant although there could be no appeal by the tenant, or vice versa".

In the present case, the amount of the judgment or the liability thereunder has not yet been determined. It therefore cannot be asserted with certitude that the value of the matter in dispute on appeal - "looked at from the point of view of the appellants" - is of the prescribed value to render the appellate judgment appealable by the appellants under section 19(1) of the Constitution of Saint Christopher and Nevis.

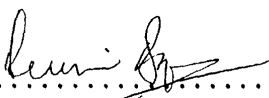
For these reasons, we must dismiss this application for leave to appeal to Her Majesty in Council and do so with costs to the respondent.

In view of this decision on the second ground, it is not necessary to deal with the first ground of objection to the application.



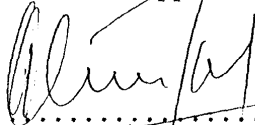
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SIR VINCENT FLOISSAC
Chief Justice

I concur.



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C.M.D. BYRON
Justice of Appeal

I concur.



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N.J.O. LIVERPOOL
Justice of Appeal