

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
Civil Division

SAINT LUCIA

Claim No. SLUHCV2020/0106

BETWEEN:

JOHN CRAIG PAUL

Claimant/ Respondent

-and-

CICERON MANAGEMENT LIMITED

Trading as

SANDALS LA TOC GOLF RESORT AND SPA IN SAINT LUCIA

Defendant/ Applicant

ON PAPER – Without a hearing

Before Master Alvin Pariagsingh

Date of Delivery: December 22, 2022

Appearances: Andra Gokool – Foster for the Claimant/ Respondent; and
Candce Fletcher for the Defendant/ Applicant

REASONS

Defendant's application for leave to appeal filed on December 10, 2021.

[1] PARIAGSINGH, M: - Before the Court is an application for leave an order of this Court made on November 25, 2021. The matter had reached before a Judge for a pre-trial review when it was referred back to this Court by order of March 22, 2022 to consider the application for leave to appeal filed on December 10, 2021. Regrettably, the application was only brought to this Court's attention on December 21, 2022. The delay in delivering a decision is because this Court was unaware of this pending application.

DISPOSITION:

- [2] For the reasons set out below, the application for leave to appeal is dismissed with no order as to costs.

REASONS:

- [3] The application for leave to appeal is supported by an affidavit of Tisa Dawes filed on the same day of the application. The Court considered this application on paper without notice to the Respondent in keeping with the principles set out by the Court of Appeal in *Cage St. Lucia Limited v Treasure Bay (St. Lucia) Ltd et al.*¹

- [4] The facts stated in the affidavit are premised on the notion that the Defendant's application of October 20, 2021 was refused.²

- [5] Upon reading the affidavit, the Court consulted its notes and realised that there is a serious disparity between the Court's notes and what is stated in the affidavit in support of the application. The Court's note of the order made on November 25, 2021 (uploaded on the e-litigation portal on January 06, 2022 at 10:28am) is that the following order was made:

- "1. Permission is granted to the Defendant to withdraw its application filed on October 20, 2021;
2. The Defendant shall pay the Claimant's costs of the application assessed in the sum of \$750.00;
3. This matter is adjourned to March 24, 2022 for a pre-trial review before a Judge; and
4. The Claimant shall have carriage of the order."

¹ Civil Appeal No. 45 of 2011 (Saint Lucia)

² Paragraph 4 of the affidavit.

[6] The Court's record is that the application filed on October 20, 2021 was withdrawn at the hearing on November 25, 2021. It was never heard on the merits and consequently it was never refused as is represented in the application.

[7] This Court has taken the time to replay and listen to the audio recording of the hearing on November 25, 2021. The relevant exchange to this application is set out verbatim below:

"The Court: Ms. Fletcher I can't give you advice on how to conduct your case, I can only treat with what is before me. What is before me is an application for extension of time. Alright, so how do you want me to proceed Ms. Fletcher?

Ms. Fletcher: It would appear that I would have to withdraw it seeing that there is no application before the court there is nothing to extent

The Court: And on the issue of costs Mrs. Gookoo- Foster?

Mrs. Foster: Yes my lord we are asking for costs of the application

The Court: How much?

Mrs. Foster: My lord \$750 in euro (laughing)

The Court: Ms. Fletcher?

Ms. Fletcher: Ah.... \$500 my lord

The Court: Alright, What date was the application filed Ms. Fletcher?

Mrs. Foster: 20th October 2021

Ms. Fletcher: Master do you have that document before you? I am using someone else's computer

The Court: Yes, 20th October. Ms. Fletcher I don't think \$750 is unreasonable

Ms. Fletcher: Pardon

The Court: I do not believe \$750 is unreasonable having regard to the affidavit filed by Mrs. Gokool – Foster. Okay? Now where does that put us in terms of progress of the substantive matter now? All witness statements and summaries are in ?

Ms. Fletcher: Yes my lord

The Court: The only outstanding issues is the objection to the hearsay which I have already adjourned to be dealt with by the judge at the PRT

Mrs. Foster: Yes my lord

The Court: Is it then that I can bid you farewell from my court

Mrs. Foster: I think so my lord.

Ms. Fletcher: Yes you can

The Court: Ms. Desir what is our PTR date?

Court Clerk: 24th of March

The Court: That is our next PTR date Counsel in the meanwhile you have sufficient time to engage Mrs. Gokool – Foster and talk settlement of this matter

Ms. Fletcher: Yes definitely

Mrs. Foster: And I hope she does

The Court: I will just read back the terms of the order to make sure I have not missed anything.

1. Permission is granted to the Defendant to withdraw its application filed on 20th October 2021;
2. The Defendant shall pay the Claimant's costs of the application filed on October 20, 2021 assessed by the Court in the sum of \$750.00;
3. The matter is adjourned to 24th March 2022 for pre- trial review; and
4. The Claimant will have carriage of this order

The Court: Is there anything further for this matter Mrs. Foster or Ms. Fletcher

Mrs. Foster: Nothing further for me my lord

Ms. Fletcher: No my lord.

The Court: The only thing I would wish to say in this matter counsel and I am glad Ms. Edwards is here is Ms. Fletcher I know that we have instructions and our litigation is driven by instructions but this is a matter that ought to be settled. Have a conversation with Mrs. Foster. It is not a matter that the parties should be put through a trial.

I wish the parties well, thank you counsel this matter is adjourned.”

[8] It is clear that the assertion that the application was refused by the Court is incorrect. The proposed grounds of appeal advanced are all based on an incorrect representation of the order November 25, 2021.

[9] The Court takes the opportunity to express its disappointment that this application was settled and filed without either properly or accurately representing what took place at the hearing or the order made. It is indeed regrettable and ought not to have happened.

[10] Respectfully, there is no need to consider the test for leave to appeal as the application of October 20, 2021 was not refused it was withdrawn.

ORDER:

[11] It is hereby ordered that:

1. The application for leave to appeal the order made on November 25, 2021 is dismissed with no order as costs;
2. The Registrar is directed to relist this matter for a pre-trial review before a Judge on the next available date.

Alvin Shiva Pariagsingh
High Court Master

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Registrar