

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CLAIM NO. SVGHCV2014/0226

BETWEEN:

KEN-I YOUNG

CLAIMANT

-AND-

**THE ATTORNEY GENERAL
OF SAINT VINCENT AND THE GRENADINES**

DEFENDANT

Appearances: Ms. Patina Knights for the Claimant, Mr J'Lany Williams for the Defendant.

2015: Jun. 22
Jul. 9

JUDGMENT

- [1] **Henry, J.:** Mr Ken-I Young initiated action against the Honourable Attorney General seeking redress in respect of injuries he allegedly sustained at the hands of two police officers whom he claims assaulted, beat and arrested him unlawfully. Mr Young obtained judgment in default of defence on April 20, 2015. By Order dated May 18, 2015 the judgment was set aside. Mr Young now applies for leave to appeal against that order.

ISSUE

- [2] The singular issue before the court is whether Mr Young should be granted leave to appeal the Order dated May 18, 2015 setting aside the default judgment.

ANALYSIS

Issue - Should Mr Young be granted leave to appeal from the Order dated May 18, 2015 setting aside the default judgment?

[3] The law mandates a prospective appellant to obtain leave of the High Court or Court of Appeal before he can appeal an interlocutory order.¹ An order is interlocutory if it is not determinative of the issues which arise in the claim.² The order setting aside the judgment in default of defence was interlocutory in nature not being determinative of the issues in the case. Mr Young's application for leave to appeal the order complies with the applicable law and the rules of court on that score. He is also required to apply in writing within 14 days of the order in respect of which he is seeking leave to appeal and he must outline the grounds on which he intends to appeal.³ Mr Young filed his written application on May 27,

¹ Section 32(2)(g) of the Eastern Caribbean Supreme Court Act Cap. 24 of the Revised Laws of Saint Vincent and the Grenadines, 2009 which states:

"No appeal shall lie under this section without leave of the judge making the order or the Court of Appeal from any interlocutory order given or made by a judge except:

- (i) Where the liberty of the subject or the custody of infants is concerned;
- (ii) Where an injunction or the appointment of a receiver is granted or refused;
- (iii) In the case of a decree nisi in a matrimonial cause or a judgment or order in an admiralty action determining liability;
- (iv) In such cases to be prescribed as are in the opinion of the authority having power to make rules of court of the nature of final decisions."

² See Rules 62.1(2) and (3) of the Civil Procedure Rules 2000 ("CPR") which define "interlocutory appeal" and outlines the test for determining whether an order is final or interlocutory as follows:

"(2) In this Part-

"interlocutory appeal" means an appeal from an interlocutory judgment or an interlocutory order.

(3) In this Part-

- (a) A determination whether an order or judgment is final or interlocutory is made on the "application test";
- (b) An order or judgment is final if it would be determinative of the issues that arise on a claim, whichever way the application could have been decided; and,"

³ See Rule 62.2 (1) and (2) of the CPR which provides:

"(1) Where an appeal may be made only with leave of the court below or the court, a party wishing to appeal must apply for leave within 14 days of the order against which leave to appeal is sought.

2015, 9 days after the decision and well within the time limited for doing so. He did not however include the proposed grounds of his intended appeal. For what it is worth, Mr Young particularized two bases on which he considers that he has a realistic prospect of succeeding at the appellate level. Conceivably, those might be some or all of his intended grounds of appeal. The court will not speculate.

[4] Nowhere in his submissions or affidavit did Mr Young attempt to explain this failure and he made no application to cure this default. This failure is fatal to his application. The court is mindful that an applicant who seeks leave to appeal must demonstrate that he has a realistic and not just a fanciful prospect of success or that there is some other compelling reason why the appeal should be heard.⁴ Mr Young contends that he has a realistic prospect of succeeding because the judge “erred in holding that the Applicant’s/Defendant’s failure to file the defence was due to police officers having been busy over the past six (6) months attending duties in the district when there was no such evidence before the Court.”

[5] It appears that the transcript was not available on the date that the application was filed and heard. However, the record when it is reproduced will reflect that the judge made no such finding but indicated that the affidavit evidence of Kezron Walters indicated that the defendant experienced difficulty scheduling interviews with the police officers involved. The judge explained that she was aware that police officers were engaged in several exercises over the relevant period and she would take judicial notice of that in finding that the defendant reasonably encountered scheduling difficulties attributable to the unavailability of the officers. She therefore concluded that this afforded a good explanation for the delay in filing a defence.

(2) An application for leave to appeal must be made in writing and set out concisely the grounds of the proposed appeal.”

⁴ See **AG of Grenada et al v. Andy Redhead Civil App. No. 10 of 2007** at para [15] per Edwards J.A. (Ag.) (as she then was).

[6] Mr Young deposed further that the “Learned Judge erred in holding that the Respondent/Defendant satisfied the conditions of Part 13.3(1) whilst agreeing that the reason the respondent/Defendant proffered for her explanation was administrative inefficiency and as such did not constitute a good explanation.” As the judge who made the order setting aside the default judgment, I do not recall agreeing that the explanation provided by the defendant was administrative inefficiency. The transcript when it becomes available will reflect what was actually said. However, even if that explanation amounted to administrative inefficiency, it is not every instance of administrative inefficiency which would be considered unacceptable as a good explanation for delay in filing a defence. In the instant case the finding regarding the explanations proffered was that while inadvertence did not constitute a good explanation, scheduling difficulties did. If Mr Young intended to rely on those two averments as his grounds of appeal, I must conclude that his chances on appeal are merely fanciful and unrealistic.

[7] In any event, by failing to state his proposed grounds of appeal Mr Young has failed to satisfy the criteria for obtaining leave to appeal. His application for leave to appeal is accordingly dismissed.

ORDER

[8] It is ordered as follows:

1. Mr Ken-I Young’s Application for Leave to Appeal is dismissed.
2. No order as to costs.

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Esco L. Henry
HIGH COURT JUDGE