

ANTIGUA AND BARBUDA

IN THE COURT OF APPEAL

MOTION NO: OF 1992

BETWEEN :

SENTINEL INSURANCE CO. LTD.

and

NATHANIEL BRADSHAW

- Applicant

- Respondent

Before: The Honourable Mr. Justice Dennis Byron - Justice of Appeal
The Honourable Dr. Nicholas Liverpool - Justice of Appeal
The Honourable Mr. Justice Satrohan Singh - Justice of Appeal

Appearances: Mr. S. C. O. Benjamin for the Appellant
Mrs. N. Rogers-Murdoch for the Respondent

1993: February 22,
June 7

J U D G M E N T

LIVERPOOL, J.A.

By un-numbered Motions dated 26th November, 1992 and filed on the same date the Applicant seeks an Order to restore Civil Appeal No:2 of 1990 which was dismissed for want of prosecution by this court on 24th November on the application of the Respondent, based on the failure of the Applicant to file the record of appeal on time; and a separate Order to stay execution of the judgment until the appeal (if restored) shall have been heard and decided.

The history of the matter is as follows:

The Respondent had insured a motor vehicle which he had purchased duty free with the Applicant company at the duty free price. Following damage to the vehicle, the Respondent's claim was completely satisfied.

On 5th November, 1990 the Respondent obtained judgment in the High Court against the Applicant in the sum of \$2,925.00. The basis of this claim was that in order to obtain another duty-free vehicle for his use, the Respondent was required to pay the out-

standing duty on the damaged vehicle, the ownership of which had in the meantime been transferred to the Applicant. It was the Respondent's case before the High Court that the Manager of the Applicant company had promised to reimburse him if he paid the outstanding duty to the government.

The Applicant filed a notice of Appeal against the judgment of the court below, but failed to file the record on time or to apply for an extension of time within which to do so. By a Motion filed on 19th November, 1991, the Respondent moved the court for an order that the appeal be described for want of prosecution. This action seemed to have generated some activity in the Applicant; for on 25th November, 1991 (less than a week later) the Applicant applied to this Court for an Order to extend the time prescribed for filing the record of appeal, on the grounds stated in its supporting affidavit. Both Motions were thus before the court when on 24th November, 1992 we dismissed the appeal for want of prosecution.

Undaunted, learned counsel for the Applicant company filed the two un-numbered Motions. The Affidavit in support of the Motion to restore the appeal gives as the main grounds the oversight counsel for the Applicant in failing to make the necessary application for an extension of time to file the record of appeal, and the Applicant's belief that substantial matters of law are involved in the appeal and that great injustice would be caused to the Applicant if the appeal is not restored.

The application for restoration is made under Order 64, Rule 13(3) of the Rules of the Supreme Court, 1970 which provides that:

"An appellant whose appeal has been dismissed under this rule may apply by notice of motion that his appeal be restored and the Court may in its discretion for good and sufficient cause order that such appeal be restored upon such terms as it may think fit".

This court examined the scope of that rule in **CALDERON V CALDERON** (Civil Appeal No:5 of 1991, St.Lucia) and there laid down certain rules by which it would be guided in dealing with applications of this nature. These were that the Applicant must establish (a) that there is good and sufficient cause for the restoration of the appeal, and (b) that there are preponderant circumstances which should incline the court in the interests of justice to exercise its discretion in favour for restoration.

In my view the affidavit does not disclose good and sufficient cause for the restoration of this appeal; as failure to file the record of appeal, or to apply for an extension of time to do so

over a period of 12 months could not be so regarded. Further, the very reasons urged for the restoration were argued in support of the application to extend the time to file the record of appeal and were rejected.

If this had been a case where the Applicant could have advanced that he wished to impeach the judgment on substantial grounds which he had not previously advanced, this court might have been moved to order a restoration of this matter, subject to being satisfied on the ground of prejudice to the Respondent. This is not such a case. All that has happened here is that Counsel seeks to have the appeal restored on the same grounds on which he failed to persuade this court to extend the time within which he should file the record of appeal. There are no sufficient grounds on which it would be proper for this court to exercise its discretion in favour of the Applicant.

This application is therefore dismissed with costs.

.....
DENNIS BYRON
Justice of Appeal

.....
N. J. O. LIVERPOOL
Justice of Appeal

.....
SATROHAN SINGH
Justice of Appeal