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IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL
OF THE CO-OPERATIVE REPUBLIC OF GUYANA

CCJ Appeal No CV 002 of 2012
GY Civil Appeal No 3 of 2005

BETWEEN

ALFRED CHUNG
INGRID CAMPBELL **APELLANTS**

AND

AIC BATTERY AND AUTOMOTIVE SERVICES
COMPANY LIMITED (IN RECEIVERSHIP) **RESPONDENT**

Before The Honourables **Mr Justice Nelson**
Mr Justice Saunders
Mme Justice Bernard
Mr Justice Wit
Mr Justice Hayton

Appearances

Mr Saphier Husain for the Appellants

Mr Andrew Pollard for the Respondent

JUDGMENT
of
Justices Nelson, Saunders, Bernard, Wit and Hayton
Delivered by
The Honourable Mme Justice Bernard
on the 16th day of April, 2013

Introduction

[1] It had always been the accepted practice in Guyana that the Court of Appeal had jurisdiction to hear and determine appeals from final orders of a Judge of the High Court including those made under Order 12 of the Rules of the High Court. The issue which has to be determined in this case is procedural but of great practical importance. Its determination will alter the practice in relation to specially endorsed writs under Order 12 of the Rules of the High Court.

Background

[2] Rameshwar Lal was appointed Receiver of the property of AIC Battery and Automotive Services Company Limited, the Respondent, under an instrument of appointment dated 23rd June, 2000 in relation to four debentures held by the National Bank of Industry and Commerce Limited. On 13th February, 2003 he commenced proceedings by specially endorsed writ against the Appellants claiming possession of property situate at 13 Vlissengen Road and Da Silva Street, Newtown, Kitty, Georgetown[1], occupied by the Appellants as directors of AIC Battery and Automotive Services Company Limited. The writ was filed with an affidavit verifying the claim.

[3] The Appellants filed an Affidavit of Defence and later what was erroneously termed an Amended Affidavit of Defence in which they challenged the Respondent's authority to bring the proceedings, and which they regarded as an abuse of the process of the court.

[4] Rameshwar Lal filed an Affidavit in Reply to which he attached copies of the four debentures and his instrument of appointment as Receiver. After an interval of twenty-one (21) months and fixtures before a number of judges, Roy J (as he was then) "struck out" the Affidavit of Defence. Having received testimony from the Receiver, he ordered that the Appellants surrender possession of the property to the Respondent within six weeks and pay the sum of $20,000 per week as mesne profits from 8th January, 2003 to the date of removal.

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[1] See *LOP Investments Ltd v Demerara Bank Ltd & Others (No. 2*) (2009) 75 WIR, 312 as to the independent statutory powers of a Receiver to sell property held under a debenture.

[5] In his written judgment dated 8th December, 2004, Roy J stated that Counsel for the Defendants (Appellants before this Court), had conceded that the Receiver had authority to commence the proceedings. This seemed to him to be in clear contradiction of the whole basis of the Affidavit of Defence challenging the Receiver's authority to file the proceedings. As a result, he held that the Affidavit of Defence disclosed no triable issue.

Judgment of the Court of Appeal

[6] The Defendants, being dissatisfied with Roy J's decision, filed an appeal to the Court of Appeal. Cummings J.A., writing the judgment of the court, declared that the right of appeal having been created by statute it behoved the court to satisfy itself of its jurisdiction to hear and determine any appeal. Consequently, the court of its own motion as a preliminary issue sought to determine its jurisdiction.

[7] The Justice of Appeal undertook an analysis of the relevant section of the Court of Appeal Act, Cap. 3:01, (section 6(2)(a)(i)) and Order 12 of the High Court Rules which provides for the filing of a specially endorsed writ. She concluded that the Court of Appeal had no jurisdiction to hear and rule on an appeal from an order emanating from a specially endorsed writ even though that order may be final because the said proceedings ranked as summary proceedings within section 6(2)(a)(i). She held that in such a case an appeal lay to the Full Court, but that with leave of the Full Court or of the Court of Appeal there could then be an appeal to the Court of Appeal, citing section 79 of the High Court Act, Cap. 3:02, and section 6(4) of the Court of Appeal Act.

Issue

[8] In a suit commenced by a specially endorsed writ, is an order granting judgment made after the striking out of an affidavit of defence that discloses no triable issue, a final order made in a summary proceeding?

[9] The relevant statutory provisions are set out below:

(i) Order 12 Rule 4(1) of the High Court Rules provides:

"4.(1) If both the plaintiff and the defendant appear, or the plaintiff appears and the defendant does not appear, the plaintiff may, if he has filed an affidavit verifying claim, apply to the Judge for final judgment, for such remedy or relief as the plaintiff may be entitled to upon the statement of claim."

(ii) Section 6(2) (a) (i) of the Court of Appeal Act, Cap. 3:01, reads:

"(2) Subject as otherwise provided in this section, an appeal shall lie to the Court of Appeal in any cause or matter from any order of the Full Court or of a judge of the High Court (whether made before or after the date on which this Act comes into force) where such order is –

(a) final and is not –

(i) an order of a judge of the High Court made in chambers or in a summary proceeding;"

(iii) Section 79 of the High Court Act, Cap. 3:02, provides:

"An appeal shall lie to the Full Court from any judgment given or order made by a single judge of the Court in exercise of its civil jurisdiction in respect of which there is no appeal to the Court of Appeal."

Was the order granting judgment a final order?

[10] Cummings J.A., analysed the nature of a "final order," and after a thorough review of cases from local and other jurisdictions concluded that the order was a final order. We are fully in agreement with her well-reasoned conclusion, the order being one which finally determined the rights of the parties.[2]

What constitutes a summary proceeding?

[11] Section 2 of the High Court Act, Cap. 3:02, does not interpret the word "proceeding," but indicates that "action" means a civil proceeding commencing a claim, and includes a suit. The word "cause" includes any action or other original proceeding. Similarly, the Rules of the High Court do not interpret "proceeding," but Order 1 Rule 2 refers to "all proceedings taken in all causes and matters . . . ." Order 2 refers to a person who seeks to enforce any legal right against another by commencing a proceeding to be

[2] See also *Singh and another v Attorney General of Guyana* (2012) 80 WIR 382

called an action. The word "proceeding" is used interchangeably throughout to indicate an action, cause or matter. It has also been used in the Rules to indicate steps taken within an action.

[12] In seeking to interpret "summary proceeding" in section 6(2)(a)(i) it may be useful to call in aid the plain meaning rule in section 195 of *Bennion on Statutory Interpretation* 5th Edn., at page 548:

> "It is a rule of law (in this Code called the plain meaning rule) that where,
>
> (a) the enactment under inquiry is grammatically capable of one meaning only, and
>
> (b) on an informed interpretation of that enactment the interpretative criteria raise no real doubt as to whether that grammatical meaning is the one intended by the legislator,
>
> the legal meaning of the enactment corresponds to that grammatical meaning and is to be applied accordingly."

[13] Section 201 of the Code explains the "informed interpretation rule" in this way:

> "(1) It is a rule of law that the person who construes an enactment must infer that the legislator, when settling its wording, intended it to be given a fully informed, rather than a purely literal interpretation (though the two usually produce the same result)."

[14] The plain meaning of "summary" is "short, speedy, without delay or without formality," and is grammatically capable of only this meaning. It must be inferred that the enactment of Order 12 was to enable a plaintiff to obtain judgment for a liquidated sum in the quickest way possible instead of enduring the time which would be spent awaiting a full and formal hearing. Order 12 was intended to be expeditious with judgment being obtained without delay.

[15] Whatever interpretation is given to the words "summary" or "proceeding" Order 12 provides the process by which summary judgment may be obtained

when there is no defence to a claim and the plaintiff has verified his claim, the intention being to dispose of the action expeditiously.

[16] Unfortunately, the procedure for obtaining summary judgment speedily through a special court has been defeated in this case by delays and protracted adjournments. The length of time taken to secure final judgment, however, has no effect on the nature of the proceedings. If leave to defend the claim is denied because no triable issue is disclosed as in the proceedings under appeal, the proceeding does not lose its summary nature even if the plaintiff is entitled to final judgment.

Is the Full Court the correct forum?

[17] The Court of Appeal on at least two occasions in the past was invited to determine the forum with jurisdiction to hear appeals from decisions of a Judge of the High Court in instances where Order 12 was successfully invoked. In *Thomas v Citizens Bank Guyana Ltd*[3], Chang, J.A. (as he was then), although expressing serious reservations as to whether an appeal lies to the Court of Appeal having regard to section 6(2)(a)(i) of the Court of Appeal Act, Cap. 3:01, refrained from resolving the conundrum in an ideal case where leave to defend in a specially endorsed writ was refused and summary judgment was entered. The learned judge's reluctance, however, was based on the fact that there was no challenge to the jurisdiction by the parties, and mainly, that there was a practice of such appeals being made to the Court of Appeal and the Court of Appeal assuming jurisdiction.

[18] The other opportunity arose in *Re Barakat's Application*[4] where the applicant sought from the Court of Appeal an interpretation of section 6(2)(a)(i) of the Court of Appeal Act to determine which court should hear an appeal that had been filed but was not yet before the Court. The circumstances in which the appeal had been brought were similar to those which arose in the *Thomas* case *(supra)*. The intended appellant had filed appeals both in the Full Court

[3] (C.A. Nos. 51 & 55/2003) (unreported)
[4] (2009) 73 WIR, 287

and the Court of Appeal. The court in a judgment by Roy J.A. declined to answer the question posed to it holding that the application related to a pending appeal, and the issue of jurisdiction would be decided at the hearing. The court, however, rightly declared that a practice, no matter how well established and which is contrary to the intent of the law, does not justify a court assuming jurisdiction in any given cause or matter. The learned judge further noted that every court of its own motion has to satisfy itself of its jurisdiction. In effect, the Court of Appeal declined to pronounce on the very issue which this Court has to determine.

[19] A review of the relevant legislative provisions suggests that the combined effect of section 79 of the High Court Act and section 6(2)(a)(i) of the Court of Appeal Act leads inevitably to the conclusion that the Full Court is the correct forum for the determination of appeals arising from orders made under Order 12 of the Rules of Court. This is so where no affidavit of defence was filed, or if filed, was dismissed for not disclosing a triable issue as was the case in the appeal before this Court.

[20] Undoubtedly, Order 12 of the Guyana Rules of the Supreme Court was adopted from Order 14 of the English Rules of the Supreme Court 1883. The purpose of that order was "to enable a plaintiff to obtain summary judgment without trial if he can prove his claim clearly, and if the defendant is unable to set up a *bona fide* defence or raise an issue against the claim which ought to be tried".[5] In fact, in one case the view was expressed that Order 14 "is intended to prevent a man clearly entitled to money from being delayed where there is no fairly arguable defence to be brought forward".[6]

[21] Under the English Rules applications under Order 14 were heard in the first instance by a Master or District Registrar, and appeals in every case were to a Judge in chambers who could confirm or himself make an order, for instance, granting unconditional leave to appeal. Appeals from such orders, except

[5] See Annual Practice 1950, Vol. 1 (Parts I-IV) note "Judgment for Plaintiff," p. 171.
[6] *Anglo-Italian Bank v Well (and Davies)* 38 L.T. 197, C.A. per Jessel M.R. at p.199. Similar sentiments were expressed by Lord Hobhouse of Woodborough in *Three Rivers DC v Bank of England* (No.3) (H.L.) [2001] 2 ALL ER 513 at 565

appeals involving matters of practice and procedure, were heard in the Divisional Court which has as its equivalent the Full Court in the hierarchy of courts in Guyana.

Disposal

[22] In light of the above findings the appeal is dismissed and the order of the Court of Appeal affirmed.

There will be costs to the Respondent to be taxed, if not agreed.

The Hon Mr Justice Nelson

The Hon Mr Justice Saunders

The Hon Mme Justice Bernard

The Hon Mr Justice Wit

The Hon Mr Justice Hayton