

IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

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

CCJ Application No. GYCV2014/003
GY Civil Appeal No. 43 of 2012

BETWEEN

- 1. MICHAEL GAYADIN**
- 2. DAMIANTI GAYADIN**
- 3. GARVIN GAYADIN**
- 4. GUYADIN CONSTRUCTION CO. LTD., a
company incorporated in Guyana with its
registered office at 1 Public Road, Vryheid's
Lust, East Coast Demerara**

APPLICANTS

AND

REPUBLIC BANK (GUYANA) LIMITED

RESPONDENT

Before The Honourables Mr Justice Nelson
Mr Justice Saunders
Mr Justice Anderson

On Written Submissions

Mr Timothy M Jonas for the Applicants

Mr Kamal Ramkarran for the Respondent

JUDGMENT
of
Justices Nelson, Saunders and Anderson
Delivered
on the 25th day of July 2014

The background

- [1] At various times during the period from April 2001 to April 2007 the four applicants (“the Borrowers”) benefited from credit extended to them by the respondent, Republic Bank (Guyana) Limited (“the Bank”). The Bank provided them with overdraft facilities and advanced various sums of money secured by promissory notes to repay the same. The Borrowers, individually and at varying times, also signed guarantees to repay the debt of other individual Borrowers, executed by way of bonds, and deeds of mortgage in favour of the Bank as security for the debt.
- [2] In June 2008 the Borrowers defaulted on the payment of their indebtedness to the Bank and also failed to honour the obligations under the guarantees. In response, the Bank initiated proceedings in the High Court to recover the various sums owed and to enforce the securities.
- [3] On 22nd January 2010, the trial judge in the Commercial Division of the High Court struck out the affidavit of defence of the Borrowers as disclosing no triable issue and awarded summary judgment in the Bank’s favour. The court ordered the debts to be paid in full and gave the Bank liberty to proceed in execution against the properties that were the subject of the bonds and deeds of mortgage.
- [4] The Borrowers appealed the decision of the trial judge to the Full Court. The Full Court reversed the judge’s decision holding, in essence, that there were indeed triable issues that arose in the case. The Full Court remitted the case for trial afresh so that evidence could be led and appropriate determinations made by the trial judge. The Full Court did not stop there but purported to determine some aspects of the case and issue directions to the trial judge on how to approach other aspects.
- [5] The Borrowers, still dissatisfied with the decision of the Full Court, applied for leave of the Court of Appeal to appeal the decision of the Full Court. By majority decision the Court of Appeal dismissed the proceedings on the procedural ground

that it lacked jurisdiction to entertain the Borrowers' application. The majority based its decision on the provisions contained in section 6 of the Court of Appeal Act, Chapter 3:01. It was their opinion that the order made by the Full Court was not a final order (since it neither disposed of the matter in dispute nor disposed of the rights of the parties) and the Court of Appeal had no jurisdiction to hear an appeal from an order of the Full Court that was not final. Justice Cummings-Edwards dissented. She took the view that the Court of Appeal did have jurisdiction. She did not, however, go on to give a view as to the manner in which the Court should dispose of the application for leave.

- [6] The Borrowers are now applying for Special Leave to appeal the decision of the Court of Appeal. We ordered that this application should be made by written submissions. Having considered those submissions we have decided to treat the application as the hearing of the appeal itself and to make such orders as we consider appropriate in the circumstances.

The Legislation in issue

- [7] The question whether or not the Court of Appeal had jurisdiction hinges on the interpretation of provisions of section 6 of the Court of Appeal Act and specifically, the relationship between section 6(2) and section 6(4). The relevant sections read:

Section 6

(1) [...]

(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;
- (ii) an order made with the consent of the parties;
- (iii) an order as to costs;
- (iv) an order referred to in paragraph (d);

- (b) a decree nisi in a matrimonial cause or an order in an admiralty action determining liability;
- (c) declared by rules of court to be of the nature of a final order;
- (d) an order upon appeal from any other court, tribunal, body or person.

(3) [...]

(4) With the leave of the Full Court or of the Court of Appeal, an appeal shall lie under this section from a decision of the Full Court upon appeal from a judge of the High Court in respect of an order referred to in subsection (2)(a)(i), (a)(ii) or (a)(iii), or in respect of an order of a judge on the High Court not referred to in the said subsection.

(5) ...

(6) ...

(7) ...

(8) ...

[8] Sub-section (2) confers on an aggrieved litigant a right of appeal to the Court of Appeal from an order made by the Full Court or a judge of the High Court under the four conditions laid out in sub-section 2(a), (b), (c) and (d). If the order appealed from is final (as opposed to being interlocutory) but it falls under (a)i, (ii), (iii) or (iv), no right of appeal is given by the sub-section. There is of course no right of appeal from the Full Court or a Judge of the High Court where it is provided by any Act that the decision of such court or judge is final in the sense that the statute itself forecloses any right of appeal. See: section 6(6) of the Act.

[9] Notwithstanding the provisions of section 6(2), a litigant who wishes to appeal from an interlocutory order that falls within section 6(2)(a)(i), (ii), (iii) or (iv) is not shut out from appealing to the Court of Appeal but such a litigant has no *right* of appeal from any such interlocutory order. A litigant who is dissatisfied with the Full Court's decision reviewing an interlocutory order of a judge must look to sub-section (4) which references appeals to the Court of Appeal from the Full Court. Sub-section (4) groups the matters giving rise to such appeals into two categories, namely, those in which, on the one hand, the Full Court has adjudicated an appeal from a judge of the High Court in respect of orders referred to in sub-section (2)(a)(i), (a)(ii) and (a)(iii) and, on the other hand, those in which

the Full Court has adjudicated an appeal in respect of an order of a judge of the High Court not referred to in sub-section 2. As the opening words of sub-section 4 indicate, a right of appeal is given to proceedings falling within either of these two categories “with the leave of the Full Court or of the Court of Appeal”.

[10] The pathway provided to the Court of Appeal in section 6(2) is independent of that provided by section 6(4). One sub-section references appeals as of right while the other addresses appeals that may be brought only with leave. This distinction between the two sub-sections was alluded to by Chang JA (as he then was), sitting in the Court of Appeal in *Sankar v Sankar*¹, when he advanced the view that:

“While section 6(2)(a)(i),(ii) and (iii) excludes orders of a High Court judge sitting in chambers or in summary proceedings, consent orders and orders as to costs from being the subject matter of appeals to the Court of Appeal, section 6(4), in recognition that appeals from such orders lie to the Full Court of the High Court, allows such decisions of the Full Court sitting on appeal to be further appealable to the Court of Appeal either with leave of the Full Court or the Court of Appeal. The same applies to an order of the Full Court sitting on appeal from any decision of a judge of the High Court which has not been mentioned in those subsections (section 6(2)(a)(i), (ii) and (iii).”

The determinations of this Court

[11] The Court of Appeal was correct to find that there was no *right* of appeal afforded to the Borrowers by virtue of section 6(2). Whether one took the view, however, that the decision the Borrowers were seeking to appeal fell within section 6(2)(a)(i) or that it did not fall under section 6(2) at all, the fact is that section 6(4) gave them a clear right to seek leave to appeal either from the Full Court or the Court of Appeal. Cummings-Edwards JA was correct to take the view that there was jurisdiction in the Court of Appeal to entertain the application before it for leave to appeal.

¹ [2003] GLR 155, 159; Civil Appeal no. 76/2001 (No. 3)

- [12] The issue remains what course should now be adopted by this Court. One possible and extremely narrow option is to remit the matter to the Court of Appeal so that it could do what it would have done if it had determined, as it should have, that it possessed jurisdiction to hear the application of the Borrowers for leave to appeal the decision of the Full Court. A second option is a slight variation on the first. It is for this Court, in effect, to determine in the Borrowers' favour the application for leave to appeal to the Court of Appeal and remit the matter to that court so that it could hear the merits of the Borrowers' complaints about the orders of the Full Court. The third option is for this Court to grasp the nettle and itself decide how to treat the application made by the Borrowers to the Court of Appeal and the orders of the Full Court given that we were provided with extensive submissions from each side on the merits of the appeal against those orders.
- [13] We consider that this third option prejudices no one and best meets the ends of justice. The parties had specifically requested that, if we were minded to grant special leave, we should treat the Borrowers' application for special leave to this Court as the appeal itself. We were also provided with extensive submissions from each side. In all the circumstances and having examined the submissions and authorities presented, we agree that the case should be remitted for trial afresh by a judge of the Commercial court. We have decided on this course of action bearing in mind as well that it was as long ago as July 2008 that the Bank commenced these proceedings in the High Court by specially indorsed writ and, if we could help it, we should avoid further delay in the prosecution of a case which is still only at an interlocutory stage.
- [14] So as not to prejudice the fair trial of the merits of the case it would be inappropriate at this stage for this Court to comment on either the reasoning of the Full Court or the respective submissions made to us on those reasons. Suffice it to say that while we specifically reserve our views on the reasoning and opinions expressed in the Full Court, we agree that this was not a case in which it was appropriate for summary judgment to have been given by the trial judge. We agree that the case should be remitted to the Commercial Court for the trial judge

to give a reasoned decision after taking evidence. We wish to make clear that at this trial *all* the relevant issues should be canvassed and, entirely unfettered by any remarks or orders made by the Full Court, the trial judge should feel at liberty to make such decisions as he or she considers appropriate.

The orders of the Court

[15] The application for special leave to appeal to this Court is granted and the Court treats that application as a hearing of the appeal itself. The Court of Appeal had jurisdiction to consider the Borrowers' application for leave to appeal the decision of the Full Court. This Court, in accordance with section 11(6) of the Caribbean Court of Justice Act², assumes the powers of the Court of Appeal and determines the application to it for leave to appeal by dismissing the same and remitting the case for trial afresh by the High Court. Each side is to bear their own costs.

The Hon Mr Justice R Nelson

The Hon Mr Justice A Saunders

The Hon Mr Justice W Anderson

² No. 16 of 2004