

**IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction**

ON APPEAL FROM THE COURT OF APPEAL OF GUYANA

**CCJ Appeal No GYCV2017/007
GY Civil Appeal Nos 27 of 2012**

BETWEEN

BLAIRMONT RICE INVESTMENT INC.

APPLICANT

AND

**KAYMAN SANKAR COMPANY LIMITED
KAYMAN SANKAR INVESTMENTS LIMITED
BENI SANKAR**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT**

**Before The Rt Honourable
and The Honourables**

**Sir Dennis Byron, President
Mr Justice Wit
Mr Justice Hayton
Mme Justice Rajnauth-Lee
Mr Justice Barrow**

Appearances:

Mr Sanjeev J. Datadin and Ms. Jamela Ali for the Applicant.
Mr Vidyanand Persaud SC and Ms. Vidushi Persaud-McKinnon for the Respondents.

JUDGMENT

of

**The Right Honourable Sir Dennis Byron, and
The Honourable Justices Wit,
Hayton, Rajnauth-Lee and Barrow**

Delivered by

**The Honourable Mr Justice David Hayton
on the 7th day of December 2017**

- [1] The Applicant, Blairmont Rice Investment Inc. (Blairmont), by its Application of 9 August 2017 seeks special leave under section 8 of the Caribbean Court of Justice Act 2004 to appeal the order of the Court of Appeal of Guyana made on 6 July 2017 in relation to its Motion filed in that court on 9 February 2017. In paragraph 11 of its Application Blairmont states that in the said Motion it sought “due to the absence of reasons for the decision of the Trial Judge that the matter be remitted to the High Court with directions that an early trial be concluded in the shortest possible time.”¹ In its Application, the affidavit in support thereof and its written submissions, Blairmont states that the Court of Appeal refused its request and ordered that the Record of Appeal be settled and that the appeal be heard without there being any written reasons for the decision of the trial judge.
- [2] Blairmont’s counsel produced no copy of the order of the Court of Appeal. However, appearing before us in person, counsel did not dispute the statement of senior counsel for the Respondents (who had the distinction of being the first counsel to appear from his Guyanese home via this court’s advanced video-conferencing facilities) that the order of the Court of Appeal merely directed counsel to agree and settle a list of documents to be included in the Record of Appeal necessary for hearing the appeal: no reference was made in the order to any request for a re-trial and a refusal thereof. The list of documents has been duly agreed and signed by counsel and filed with the Court of Appeal, so that a date for the appeal may be fixed. Nevertheless, before such list was signed off, Blairmont filed this application to the Caribbean Court of Justice (the CCJ) for special leave, seeking that the matter be sent down to the High Court for a fresh trial instead of the substantive appeal proceeding to be heard by the Court of Appeal with the benefit of all relevant documents, except any written reasons of the trial judge.
- [3] We reject Blairmont’s application for special leave because counsel’s Motion of 9 February 2017 actually sought to progress Blairmont’s substantive appeal by having the Court of Appeal hear it in the light of the availability of the pleadings, exhibits, affidavits, the trial judge’s notes of evidence and his detailed order, but without any written reasons for his decision. This clearly appears from [4] to [6] below (with our added italic and bold fonts where appropriate and also our comments within square

¹ See Record p. 5.

brackets). Having elected to progress matters so as to have the Court of Appeal hear Blairmont's substantive appeal, Blairmont's counsel cannot now disavow this course which he sought and, instead, seek to have the case sent down to the High Court for a fresh trial.

- [4] In his Motion before the Court of Appeal Blairmont's counsel sought "(a) An Order that just, equitable and appropriate directions be given by this Court for the settling of the Record of Appeal herein [which we note is only necessary if the matter is going on to be heard in the Court of Appeal and not sent back for a fresh trial]; (b) An Order to provide for such Orders and/or directions as may be necessary *for the resolution of the Notice of Appeal* filed herein on behalf of the Applicant/Appellant; (c) Such further and other directions/ and or orders as may be just and appropriate in the circumstances; (d) costs." His Motion required the Court to "take further notice that the grounds of this Motion are *fully set out in the Affidavit in Support of Motion* filed herein."
- [5] The supporting affidavit of Mr Jai Benie in paragraphs 7 and 8 states that there is definitely no chance of the substantive appeal that is pending being addressed without the intervention of the Court of Appeal owing to the absence of any reasons for the trial judge's decision. He states in paragraphs 9 and 10 that the Notes of Evidence and all other records, documents and pleadings are available, the only document not being available being the written reasons of the experienced trial judge, Chang CJ (ag), who had subsequently retired without providing any written reasons.
- [6] In paragraph 12 Mr Benie states that he is advised by counsel and verily believes that an "appropriate Order and/or direction is necessary from this Court *for the appeal to proceed and for resolution of the Notice of Appeal* filed herein" and that "without an Order from this Court the matter will *advance* no further and the Applicant Company will continue to suffer severe hardship." He further states at paragraph 14 that "I am advised by Counsel and verily believe that this application is not a consideration of the merits of the appeal but *is a procedural and non-contentious application to allow the matter to advance.*"
- [7] Thus, the Court of Appeal directed the preparation of a list of documents to be included in the Record of Appeal to enable the substantive appeal to be heard by the Court of

Appeal with the benefit of the pleadings, affidavits, exhibits, the trial judge's notes of evidence and his detailed order. Despite the judge not having provided any written reasons, it seems that the Court of Appeal must have considered that this was a relatively straightforward case, where it was likely that it could draw the necessary inferences concerning the findings of fact and the application of law so as to provide a satisfactory appellate judgment: cp *Hughes v Hughes*.² If this does not prove possible, the Court of Appeal may decide to use its ample powers under sections 7 and 8 of the Court of Appeal Act (Cap 3:01), for example, to require the production of additional evidence or, if need be, it may order a fresh trial under section 9 thereof as to the events occurring over seven years ago.

Background and Procedural History

- [8] Since two other motions in these proceedings had reached this Court in August 2013, but have not yet been dealt with on referral by this Court to the Court of Appeal for an expeditious hearing, some further background and procedural history are required. However, since it is for the Court of Appeal to draw the necessary inferences in hearing the Applicant's substantive appeal, we will only briefly outline the background.
- [9] In essence, in December 2006, Blairmont and the Respondents entered into three agreements pursuant to which the Respondents sold their interest in certain rice lands, equipment and buildings to Blairmont which entered into possession of the properties. Upon signing the agreements, Blairmont made an initial payment. The remaining purchase price was agreed to be paid in portions payable at half-yearly intervals. There was an express term in the agreements that the Respondents had the right to repossess the properties sold under the agreements if Blairmont failed to make the required payments.
- [10] Blairmont failed to make the required payments. The Respondents considered this to be a repudiation of the agreements and in January 2011 they communicated to Blairmont their acceptance of this repudiatory conduct and their decision to terminate the agreements and seek to repossess their properties.

² (1993) 45 WIR 149.

- [11] The Respondents filed their statement of claim as Plaintiffs in the High Court on 4 April 2011 and Blairmont filed its defence and counterclaim on 29 April 2011. Within eleven months, on 29 March 2012, Chang CJ (Ag) expeditiously decided the case and made the following orders. He ordered that the three Agreements of Sale and Purchase entered into between the Plaintiffs and the Defendant on 21 December 2006 “have been rescinded due to the breach thereof by the Defendant.” He ordered the Plaintiffs “to pay to the Defendant by way of restitution the sum of \$232,277,108 for the return of ownership and vacant possession of all properties, movable and immovable, subject of the three aforesaid Agreements of Sale and Purchase, save and except one gasification plant, the property of the Defendant within two weeks from the date hereof.” He further ordered that “the Defendant do forthwith deliver up to the Plaintiffs vacant possession of the above mentioned movable and immovable properties upon payment by the Plaintiffs to the Defendant of the aforesaid sum of \$232,277,108.” He dismissed the Defendant’s counterclaim and awarded the Plaintiffs costs of \$40,000. It is not known, when delivering his decision, whether he gave some oral reasons that could have been recorded and subsequently transcribed if necessary. However, after ten years as Acting Chief Justice he retired in 2016 without written reasons having been produced for his decision.
- [12] On 17 April 2012, Blairmont filed an appeal in the Court of Appeal and simultaneously sought a stay of the execution of the orders of Chang CJ (Ag). Cummings-Edwards JA (as she then was) granted the stay on 15 May 2012 until the determination of the substantive appeal. The Respondents filed a Motion on 28 May 2012 seeking to set aside the stay. This Motion has not been heard after all these years.
- [13] Blairmont filed a Motion on 3 July 2013 seeking an order that the Respondents vacate the properties. This was on the basis that Blairmont was “forcibly and brutally evicted by the Respondents in the pre-dawn hours of May 12, 2013.”³ The Court of Appeal by a majority held that it did not have jurisdiction to hear the Motion and so dismissed it on 30 July 2013. Blairmont appealed to the CCJ and, after hearing the parties’ counsel, on 13 August 2013 an order by consent was issued by this Court that the Motion be remitted to the Court of Appeal to be heard on its merits along with the Respondents’

³ See Record p 4.

Motion of 28 May 2012. The Court directed that “the hearing of the notices of motion be deemed fit for urgent hearing by the Court of Appeal.” Most surprisingly, the Motions still remain to be heard.

[14] It is very difficult to understand how this can be possible or justifiable in any proper legal system. We, however, have no evidence before us as to this most unsatisfactory state of affairs. Whatever explanation may be proffered as to difficulties in providing a panel of three judges to hear the appeals (eg as to judges who recused themselves or who retired without being replaced for some time) we do not think that it could justify a delay of more than four years.

[15] The Applicant’s Notice of Appeal was filed on 17 April 2012. Over five and a half years have elapsed since then and it is clear that the substantive appeal needs to be heard as expeditiously as possible. As this Court is the final court of appeal of Guyana, it has the implied duty and power to monitor compliance with its orders to ensure that justice is done in accordance with its decisions. It will, therefore, require the Registrar of the Court of Appeal to notify this Court as ordered below.

Orders of the Court

[16] It is hereby ordered that:

- (a) The Application for Special Leave is refused;
- (b) The hearing to determine the Applicant’s Notice of Appeal filed on 17 April 2012 is deemed fit for urgent hearing by the Court of Appeal;
- (c) The Registrar of the Court of Appeal by 21 December 2017 notify the Registrar of the CCJ of a date fixed for the hearing of the said Notice of Appeal;
- (d) The Applicant pay the Respondents’ costs on the Basic Costs scale.

/s/ CMD Byron

The Rt. Hon. Sir Dennis Byron, President

/S/ J Wit

The Hon. Mr. Justice J. Wit

/s/ D Hayton

The Hon. Mr. Justice D. Hayton

/s/ M Rajnauth-Lee

The Hon. Mme. Justice M. Rajnauth-Lee

/s/ D Barrow

The Hon. Mr. Justice D. Barrow