IN THE COURT OF APPEAL

GRENADA

Motion No. 1 of 1973

Between: HUGH BLANCO Applicant/Defendant

and

FEDERAL INVESTMENTS LTD. Respondent/Plaintiff

Before The Honourable Chief Justice (Ag.)
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Louisy (Ag.)

E.A. Heyliger for Applicant
G.E.D. Clyne for Respondent

April 12, July 20, 1973

CECIL LEWIS C.J.(Ag.)

This is an application by the applicant/defendant Hugh Blanco for leave to appeal to Her Majesty in Council from a decision of this Court delivered on January 25, 1973. The application is made under section 106(2)(a) of the Constitution of Grenada which reads as follows -

> "Subject to the provisions of section 37(7) of this Constitution, an appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council with the leave of the Court of Appeal in the following cases -
>
> (a) where in the opinion of the Court of Appeal the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council, decisions in any civil proceedings; .... "

The question involved in the appeal is stated in the applicant's notice of motion as follows:-

> "Whether, notwithstanding the provisions of O. 18 r. 1 of the Rules of the Supreme Court 1970 no statement of claim is required where a writ is endorsed for a liquidated demand under Order 6 rule 2(b)."

The facts leading up to this application are as follows -

On March 23, 1972 the respondent/plaintiff issued a writ against the applicant in Suit No. 135 of 1972. Appearance was entered on March 29, 1972.

/The...

The respondent/plaintiff's writ contained a claim for a debt amounting to $402.45 and was endorsed in accordance with the provisions of Order 6 rule 2(1)(b) in the following terms:

> "THE PLAINTIFFS' Claim is for money due and owing by the Defendant to the Plaintiffs for the price of goods sold and delivered to the Defendant by the Plaintiffs at the Defendant's request.
>
> PARTICULARS
>
> 1972
> March To this amount due and owing by the Defendant to the Plaintiffs for gasolene sold and delivered to the defendant by the Plaintiffs at the Defendant's request during the period 31st August 1969 to 18th September 1969, detailed particulars of which have been already supplied to the Defendant..... $402.45
>
> The Plaintiff Claims: $402.45
>
> And $35.00 for costs. If the amount claimed and costs be paid to the Plaintiffs or their Solicitor or Agent within 8 days after service hereof (inclusive of the day of service) further proceedings will be stayed."

The applicant did not enter a defence to the claim and on May 19, 1972 the respondent/plaintiff entered judgment in default of defence for the sum claimed in the writ and costs amounting to $35. On September 11, 1972, the applicant applied to this court for an extension of time within which to file an appeal against the default judgment. In support of his application he urged that (a) no statement of claim was served on the defendant (b) the writ of summons filed and served in the action was not endorsed with nor was it accompanied by a statement of claim; and, consequently, there was no authority enabling the plaintiff to enter judgment in default of defence in the circumstances in which it was entered.

When the application came before this court it was contended on behalf of the applicant that the appropriate form of writ which the respondent/plaintiff should have used was Form No. 2 in the Appendix A to the Rules of the Supreme Court, 1970, which form relates to a writ of summons with a statement of claim endorsed thereon; that the writ failed to contain the words "statement of claim" and the note appearing in the said Form No. 2; and therefore no statement of claim was endorsed thereon.

/He....

He accordingly contended that by reason of these omissions in the writ the default judgment was irregular as no statement of claim had been served on the applicant. The acting Chief Justice who delivered the judgment of the Court in which the other members concurred said he was unable to accept these submissions and that the substance of the matter had to be looked at. He held that the writ of summons issued by the respondent/plaintiff fell squarely within the provisions of O. 6 r. 2(1)(b); that there was before the court a writ endorsed with a claim for a liquidated debt with a statement of the amount claimed in respect of the debt in the sum of $402.45; that the writ contained a claim for costs and also a statement that if within eight days after service of the writ (inclusive of the day of service) the amount claimed and costs be paid, further proceedings will be stayed. He concluded his judgment with these words

> "In my opinion, the form of writ appropriate to this type of claim is Form No. 1 in Appendix A to the Rules of the Supreme Court and the plaintiff/respondent is accordingly not required to serve a statement of claim, and was entitled to enter final judgment in default of defence under O. 19 r. 2, the time for serving the defence having expired".

The application was accordingly refused.

In the present application before the Court, counsel for the applicant concedes that he has to satisfy the court that the question which he has raised is of great general or public importance before he can obtain leave to appeal, and he urged the following grounds in support of his application: (a)the question involves a principle of law of general local application, viz:, the interpretation of O. 6 r. 2(1)(b) and O. 18 R. 1 of the Rules of the Supreme Court, 1970 (b) the matter is of great local importance in judicial proceedings (c) it is also of importance to local solicitors and would-be litigants and not only to the parties to the present suit (d) a similar question has arisen in suit No. 136 of 1972 between the same parties.

Counsel for the respondent contended that the question is not of great general or public importance because it is confined in its application to the legal profession only, and also that since the relevant

/rules....

rules have been interpreted by the Court of Appeal the issue is now beyond doubt and everyone is bound by the ruling of this Court.

Counsel for the applicant quoted the three following cases in support of his application: Emery v. Binns 13 E.R. 855, Brown v. McLaughan 17 E.R. 117 and In re the Attorney General for the Colony of Victoria 16 E.R. 200. He had however to concede that these were all cases in which special leave to appeal had been granted by the Privy Council itself. In my view the principles applicable to the granting by the Privy Council of special leave to appeal from decisions of this court to Her Majesty in Council are not the same as those which this Court is called upon to apply when an application is made to it under S. 106(2)(a) of the Constitution of Grenada. This Court is restricted by the language of this subsection to granting leave only in cases where the provisions of the subsection are satisfied, whereas, in the case of an application for special leave the terms on which such leave will be granted are settled by the Privy Council itself.

A similar application fell to be considered by the Federal Supreme Court of the West Indies under S. 45 of the Federal Supreme Court Regulations 1958 paragraph (b) of which is substantially the same as S.106(2)(a) of the Grenada Constitution. The application arose in connection with Civil Appeal No. 19 of 1959 of Trinidad and Tobago the parties to which were Albert James Mauritzen, Plaintiff/Applicant, and Gordon Grant and Company Ltd, Defendant/Respondent. The judgment in this application appears to be unreported.

S. 45 of the Federal Supreme Court Regulations 1958 in so far as it is material provides:-

> "... an appeal shall lie -
>
> (b) at the discretion of the Federal Supreme Court, from any other judgment of the Federal Supreme Court, whether final or interlocutory, if, in the opinion of the Federal Supreme Court, the question involved in the appeal is one which by reason of its great general or public importance, or otherwise, ought to be submitted to Her Majesty in Council for decision".

The question raised by the applicant Mauritzen related to the

/interpretation....

interpretation of the Rent Restriction Ordinance and the Port of Spain Corporation Ordinance and he submitted that the construction of these Ordinances raised a matter of great general or public importance because "it touches on the rights of landlords and tenants and on the powers of the Port of Spain and San Fernando Corporations." The application was granted by a majority of the Court but Rennie, P. with whose reasoning I agree, in a dissenting judgment said:-

> "....I regard such an argument as being equivalent to saying that a construction of a public enactment which is not in accordance with the wishes of a party is a matter of great general or public importance. The possibility that there may be a large number of persons who may wish to have a different construction placed on the enactment would not make what, in my view, is a purely personal matter into one of great general or public importance. It would be of great general or public importance to have the law settled if it is, in fact, unsettled, but one does not prove an unsettled state of law by putting forward his claim and by stating that he does not like the decision on his claim. If that were so, the law would always be unsettled.
>
> From the provisions of the regulation it seems clear that this Court must first determine whether the question involved in the appeal is one of great general or public importance and, having done so, then proceed to exercise its discretion in determining whether such a question ought to be submitted to Her Majesty in Council for decision. There are clearly two things the applicant must do: he must satisfy the Court that the question involved in the appeal is one of great general or public importance and he must put forward material on which the Court can exercise its discretion. How is he seeking to prove that the question involved in the appeal is one of great general or public importance? He endeavours to do so by arguing that the decision is concerned with the construction of an Ordinance which affects the rights of a large number of persons. He puts forward no evidence to show that even a single person, other than himself, has an interest in the appeal going forward. There is nothing I can find in the application to make me come to the conclusion that the question involved in the appeal is one of great general or public importance. As mentioned by Myers, C.J. in Associated Motorists Petrol Co. Ltd. v. Bannerman No. 2 (1943) N.Z.L.R. 664 at 666 "the mere fact that an important question of law may be involved is not sufficient to bring the case within paragraph (b) of r. 2. There must be something more than that: it must be shown to the satisfaction of the Court that the question involved in the appeal is one, which by reason of its great general or public importance, ought to be carried further." The applicant in this case has done no more than to say an important question of law is involved in the appeal. This in my view, is not enough.
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> For the above reasons, I would dismiss the application with costs."

/I think....

I think this statement is particularly appropriate to the circumstances of this case.

Here, the only evidence adduced by the applicant in his affidavit is a statement that in another case between himself and the plaintiff/respondent the same point as to the construction of the relevant rules of the Supreme Court is raised, but this in my opinion is not enough to make the question one of great general or public importance. The applicant has not adduced any evidence to show that anyone other than himself has any interest in having the question involved in the appeal determined by Her Majesty in Council. His counsel has stated in argument that the matter is of great local importance to solicitors and would-be litigants but this is a mere assertion. There is nothing to support the view that other solicitors are interested in this matter or that they agree with the applicant's interpretation of the relevant Rules of Court, and as far as the interest of would-be litigants is concerned this is only speculation.

Counsel for the respondent is in my opinion correct when he stated that as the matter was confined in its application only to the legal profession it was not of great general or public importance. No member of the public is likely to be affected adversely by the interpretation which this court has put on O. 6 r. 2(1)(b). In actual fact the question in connexion with which the applicant seeks leave to appeal is one dealing with a minor point of procedure and there is no evidence that the persons most interested i.e. members of the legal profession are dissatisfied with the decision of this court on the point involved or that this decision is causing concern in their ranks. If this were the case then it would have been an easy matter for the applicant's solicitor to have produced an affidavit to this effect.

The applicant has failed to satisfy me that the question which he has raised is, in the first place, one of importance, and still less has he satisfied me that it is of great general or public importance.

It has been held in Australia that the fact that the matter is one of great importance is not enough to justify leave being granted

/to....

to appeal to the Privy Council in respect thereof. See Deakin v. Webb, Lyne v. Webb (1904)1 C.L.R. 585; and Australian National Airways Proprietary Ltd. v. The Commonwealth(No. 2)(1946) 71 C.L.R. 115

For the above reasons I would dismiss the application with costs.

P. Cecil Lewis
Acting Chief Justice

ST.BERNARD, J.A.

I agree.

E.L. St.Bernard
Justice of Appeal

LOUISY J.A.(Ag.) [Read by Bishop J.A. (Ag.)]

I have had the advantage of reading in draft the judgment prepared by the acting Chief Justice. I agree with it and would therefore dismiss the application with costs.

Allan Louisy
Justice of Appeal(Ag.)