

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

CIVIL APPEAL NOS. 15 AND 16 OF 2002

BETWEEN:

ARMAND NANO

Appellant

and

ATTORNEY GENERAL OF SAINT VINCENT AND THE GRENADINES

Respondent

and

THIERRY NANO

Appellant

and

ATTORNEY GENERAL OF SAINT VINCENT AND THE GRENADINES

Respondent

Before:

The Hon. Sir Dennis Byron
The Hon. Mr. Albert Redhead
The Hon. Mr. Ephraim Georges

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Ronald Marks for the Appellant
Mr. Jaundy Martin for the Respondent

2003: March 6;
September

JUDGMENT

[1] **BYRON, C.J.:** This is an application for an extension of time within which to appeal. On the 28th day of March 2002, Bruce-Lyle J. made an order for the

compulsory winding up of New Bank Limited, a company in which the Applicants claim to have inherent jurisdiction as creditors and contributories. In that order Mr. Marcus Wilde of Halifax, Nova Scotia, Canada, was appointed as Liquidator. On the 10th April, 2002, The Applicants lodged Notices of Appeal against the Order in their capacity as shareholders of the bank. On the 31st of October the appeal was dismissed. On the 29th day of November 2002, the applicants alleging that they were contributories, applied for leave to appeal out of time.

The Law

- [2] This is an area of law which has been well settled. Granting the extension of time to file an appeal out of time is a discretionary power of the court, which will only be exercised for good and substantial reasons. The matters which the court will consider in the exercise of its discretion are (1) the length of the delay; (2) the reasons for the delay; (3) the chance of success; and (4) the degree of prejudice.¹

The Length of the Delay

- [3] The application has been filed more than seven months late. There is a plethora of authorities that such a delay is inordinate. For example an application for extension of time to appeal made four months after a Decree absolute was held that to be inordinate.² Similarly, an application for an extension of time to appeal after a delay of eight weeks was inordinately long³.

The Reason for the Delay

- [4] Before granting an extension of time, the court must also examine whether the Applicant has a substantial reason for the delay. It is necessary for an applicant

¹ *Harold Simon v Carol Henry and Tracey Joseph*, Antigua and Barbuda Civ. App. No. 1 of 1995

² *Monica Patsy Greuner v Carl Eugene Greuner*, Court of Appeal, Grenada, Motion No. 13 of 1999

³ *Harold Simon v Carol Henry and Tracey Joseph*, Court of Appeal, Antigua and Barbuda, Civil Appeal No. 1 of 1995

who seeks the indulgence of the court to show such circumstances as will satisfy the court that his is an exceptional case.⁴

In this case the reason given for the delay is that the applicants made an error of law in the designation of their status in their first attempt to appeal, which had been filed within the time limited for appealing. We have consistently held that an error of law does not necessarily constitute a good reason for delay. In this case it could not be considered substantial. It is questionable whether, in any event, that is the correct classification, as opposed to simple carelessness.

The Chance of Success

- [5] Two wings of complaint have been urged. On the one hand the applicants complained that the rules of natural justice were broken because no specific allegations of improper conduct had been made against them in their capacities as contributories or creditors, thereby denying them the opportunity of appropriate denial. In addition, the applicants complained that the said order was based on a report which they never got the opportunity to examine and respond to.
- [6] The other was that the liquidator was biased against the company. Mr. Marcus A. Wide is a partner of the firm Price Waterhouse Coopers, against whom the applicants have a lawsuit pending in Saint Vincent and the Grenadines for breach of trust and professional misconduct. Neither of these grounds of appeal raise issues which are sufficient to show that any injustice would be suffered if the application was refused. This is a case where the delay was inordinate, there was no good reason for the delay and the merits of the appeal are at best questionable.

The Degree of Prejudice to the Respondent if the Application is Granted

⁴ *Evelyn v Williams* (1962) 4 W.I.R Lewis J at page 266.

[7] The Court must ask itself what is the extent to which the Respondent will be prejudiced if leave is granted.⁵

[8] By the time the application was argued the liquidation had already been in progress for several months. It was represented that several irreversible steps had already been taken, altering the status quo. In addition to any other reason any orders would be ineffectual.

Conclusion

[9] There was no good and substantial reason to exercise discretion in favour of the applicant. The delay was inordinate. There was no good reason for the delay. The merits of the appeal were at best questionable and reversal of the order of the court likely to be ineffectual.

[10] The application is therefore dismissed.

Sir Dennis Byron
Chief Justice

I concur.

Albert Redhead
Justice of Appeal

I concur.

Ephraim Georges
Justice of Appeal [Ag.]

⁵ **Leonard Yates Construction Co. Limited v Edward Silver**, Court of Appeal, British Virgin Islands, Civil Appeal No. 8 of 2001