

IN THE COURT OF APPEAL

SAINT VINCENT AND THE GRENADINES

CIVIL APPEAL NO.4 OF 2004

BETWEEN:

P.B. NEUMATICO PARTNERSHIP

Claimant/Respondent

AND

CHRISTIAN HOBRATH

Applicant

AND

JUDITH JOANN HOBRATH

Applicant

AND

NATIONAL COMMERCIAL BANK

Defendant/Respondent

Appearances:

Mr. Emery Robertson for the Applicant. Mr. Joel Pitt with him

Mr. Richard Williams for Neumatico Partnership. Ms. Roxann Knights with him.

Mr. Perry Joseph holding papers for Mr. Graham Bollers for National Bank.

2004: June 21, 24

RULING

[1] **REDHEAD, J.A. (Ag.):** This is an application by Mr. Robertson on behalf of applicants, Christian Hobrath and Judith Hobrath, for leave to appeal an interlocutory judgment delivered on 22nd March 2004 and to extend the time for the filing of the notice of appeal.

[2] This application was filed on the 8th day of April 2004. Mr. Robertson in seeking leave argued that this application was out of time as he ought to have filed it in 14 days after the order of 22nd March 2004 was made.

- [3] On or about the 12th day of June 2003 Neumatico obtained a judgment against Christian Hobrath and Judith Hobrath for the sum of US\$86,100.00 (E.C. equivalent \$233,925.09) from the District Court for Criminal Cases in Vienna, Austria.
- [4] Neumatico claims that this sum was held in an account at the National Commercial Bank, Bedford Street, St. Vincent and the Grenadines in the names of the Applicants. Neumatico in the court below sought the following reliefs:
- (a) Damages in the sum of US\$86,100.00 (E.C. equivalent \$233,925.09);
 - (b) An order that the National Commercial Bank do transfer the sum of US\$86,100.00 (E.C. equivalent \$233,925.09) held by them on behalf of the first and second named Defendants
 - (c) Alternatively, a mandatory injunction that the Defendants return the sum of US\$86,100.00 or E.C. equivalent \$233,925.09 to the Claimants forthwith
 - (d) Costs to be assessed
 - (e) Such further or other reliefs.
- [5] The learned trial judge ordered, inter alia, that the applicants Christian Hobrath and Judith Hobrath be restrained by removing from the jurisdiction, disposing of or otherwise dealing in any manner their assets at the National Commercial Bank (SVG) Limited within the jurisdiction, save in so far as the value of the same exceeds the sum of \$86,100.00 or its equivalent of \$233,925.09 until the hearing and the determination of the matter.
- [6] Notwithstanding paragraph 1 hereof Christian Hobrath and Joanne [sic] Hobrath shall be entitled to draw down the sum of \$20,000.00 E.C. from their account to meet their legal expenses.
- [7] On 8th April 2004 an affidavit sworn to by Mr. Joel Pitt was filed in support of this application. On 18th June 2004 a further affidavit was deposed to by Joel Pitt in support of the application.

[8] Although the application itself does not address the question of a stay, paragraph 6 of the affidavit filed on 18th June prays “for a stay of execution of all proceedings in this matter pending the hearing on a determination of this appeal.”

[9] Mr. Robertson in arguing for leave to appeal and to extend the time in which to file his appeal and for a grant of an order for a stay urged on me most strenuously that the Vienna judgment must be registered before it can be enforced in the High Court in St. Vincent. In support of this he referred to S.8 of the Foreign Judgments (Reciprocal Enforcement) Act Cap.8 which provides as follows:

“No proceedings for the recovery of a sum payable under a foreign judgment, being a judgment to which this Act applies, other than proceedings by way of registration of the judgment shall be entertained by the High court.”

[10] The question to be determined therefore is the judgment in question a judgment to which this Act applies? For an answer to this question one must therefore turn to section 3 of the Act.

[11] It is not shown that a judgment of the Superior Court of Vienna is a judgment of that country to which this Act applies. The answer must be in the negative.

[12] Mr. Robertson also referred to Civil Procedure Rules 2000 72.2 – APPLICATION FOR REGISTRATION:

“An application to have a judgment registered in the High Court may be made without notice to the Court but must be supported by affidavit evidence.”

This is of no help to Mr. Robertson as he must first show that the judgment could be registered by virtue of the Foreign Judgments (Reciprocal Enforcement) Act Cap 87.

[13] Mr. Williams argued on behalf of the Neumatico that if the judgment cannot be registered then one can bring an action under and by virtue of the common law to recover the money as a debt due and owing. I agree, as I see it, registration of the judgment facilitates recovery of the debt, because if it is registrable then the creditor enforces the judgment just as if it were a judgment given by a court in St. Vincent.

[14] I turn now to the application for leave to appeal the interlocutory judgment delivered on 23rd March 2004. Mr. Williams argued that leave was not required to, Eastern Caribbean Supreme Court Saint Vincent and the Grenadines Act Cap. 18 s. 32(2). No appeal shall lie under this section –

“(g) without the leave of the judge or of the Court of Appeal from any interlocutory judgment or an interlocutory order given or made by a judge except:
(i)
(ii) Where an injunction or the appointment of a receiver is granted or refused.”

[15] There can be not doubt that the relief granted to Neumatico by the learned trial judge was in the form of a mareva injunction. I therefore agree with Mr. Williams that this is an injunction, the law is very clear and no leave is required.

[16] Finally I look at the request for leave to extend the time for filing the notice of appeal. There is no appeal filed. As I have said above there is no application as such for leave to extend the time for filing of appeal. There is only a paragraph in the affidavit of Mr. Joel Pitt which speaks to that.

[17] Although the applicants did not require leave in which to file notice of appeal, the notice of appeal ought to have been filed within 7 days of the order made as it is a procedural appeal, Ord.62.5(a) CPR 2000.

[18] In *Harold Simon and Carol Henry v Tracey Joseph¹ Singh J.A.* outlined four factors which the court should take into consideration in exercising discretion to grant leave to extend time to appeal. They are:

- (1) the length of delay
- (2) the reasons for the delay
- (3) the chances of the appeal succeeding if the extension is granted and
- (4) the degree of prejudice to the respondent if the application is granted.

¹ Civil Appeal No.1 of 1991 Antigua & Barbuda

[19] As I said above, Mr. Robertson strenuously argued that the Vienna judgment must be registered before it can be enforced here. I do not agree as section 8 of the Foreign Judgments (Reciprocal Enforcement) Act offers no such accommodation. This is the main plank on which Mr. Robertson bases his case and on which he hopes to succeed on appeal.

[20] Further in an application for leave to extend the time for filing an appeal, the applicant should file a full affidavit setting out the four conditions referred to above. The court can only exercise its discretion if it is satisfied that the conditions or some of terms are fulfilled.

[21] The two affidavits filed on behalf of the applicants do not meet those requirements. In *Palata Investments v Burt and Sinfield Ltd and others*² Lord Ackner LJ in considering the exercise of this discretion expressed the following opinion:

“In cases where the delay was very short and there was an acceptable excuse for the delay, as a general rule the applicant should not be deprived of his right of appeal so no question of the merits of the appeal will arise. We wish to emphasize the discretion which felt to be exercised is unfettered, and should be exercised flexibly with regard to the particular facts of the case. No doubt in some cases it may be practical to have regard to the merits of the appeal, because it may be wrong as indeed may be an unkindness to the appellant himself to extend his time for appealing after he has allowed time to elapse to enable him to pursue a hopeless appeal.”

[22] In my judgment the applicants have no chance of success on this issue because Neumatico has a right at common law to pursue its claim in the High Court in St. Vincent against the applicants to recover money which Neumatico claims is owing to it. In the premise therefore I cannot exercise my discretion in favour of the applicants. The applications filed on behalf of the applicants are therefore dismissed.

[23] Costs to the Claimant/Respondent agreed at \$1,500.00.

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A.J. Redhead
JUSTICE OF APPEAL (Ag.)

² 1985 2 All 517 at 521