GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.2 OF 2005

BETWEEN:

GRENADIAN GENERAL INSURANCE COMPANY LIMITED

Appellant

and

JANIN CARIBBEAN CONSTRUCTION LIMITED

Respondent

Before:

The Hon. Mr. Michael Gordon, QC	Justice of Appeal
The Hon. Mr. Hugh A. Rawlins	Justice of Appeal
The Hon. Ms. Ola Mae Edwards	Justice of Appeal [Ag.]

Appearances:

Mr. K. Derrick Knight, QC, for the Appellant
Mr. Michael Sylvester for the Respondent

2005: December 7;
2006: May 8.

JUDGMENT

[1] RAWLINS, J.A.: This appeal is against a decision of a Judge of the High Court in which he dismissed an application by the defendant/appellant, the Insurance Company, to set aside a default judgment that was entered in favour of the claimant/respondent, Janin, on 23rd May 2002.

Brief background

[2] By way of a brief background to the decision, Janin's claim, which was filed by Claim Form on 8th April 2002, sought damages for alleged breach of two motor vehicle insurance policies issued by the Insurance Company for two vehicles which Janin owned. The vehicles were involved in motor vehicle accidents. Janin

became liable, as a result of judgments, to pay related damages and costs. Janin sought to be indemnified by the Insurance Company for those damages and costs.

[3] The default judgment of 23rd May 2002 was entered upon Janin's request under the Eastern Caribbean Supreme Court Civil Procedure Rules, 2000.[1] Janin was awarded $89,128.36, with statutory interest. Subsequently, by a letter dated 12th July 2002, the Registrar declined to accept a Memorandum of Appearance that the Insurance Company tendered for filing pursuant to the 1970 Supreme Court Rules. The Registrar informed the Insurance Company that it was now required to enter appearance by filing an acknowledgment of service pursuant to CPR 2000.

[4] Janin issued a judgment summons on 31st July 2002 to enforce its default judgment. The Insurance Company applied on 1st October 2002 to set aside the default judgment on various grounds. These included the jurisdictional ground that the default judgment was entered under CPR 2000, which rules are not applicable to the Supreme Court of Grenada. The learned judge dismissed the application. This appeal raises only this jurisdictional issue, but the issue may be put into full perspective by restating three grounds as they are set out in the appeal.

The grounds of appeal

[5] The grounds of appeal are stated as follows:

(a) That the learned Trial Judge failed to advise himself that the Civil Procedure Rules 2000 referred to in his Judgment were rules applicable to the Member States and Territories of the Eastern Caribbean Supreme Court only and not to the Supreme Court of Grenada and the West Indies Associated States, the Constitutional Court of Grenada.

(b) That the learned Trial Judge failed to advise himself that the Registrar had no lawful authority to accept a claim form and the statement of claim filed by the claimant in claim no. 2002/0173.

[1] Hereinafter referred to as "CPR 2000".

(c) That the learned Trial Judge failed to advise himself that the Registrar had no lawful authority to refuse to accept the entry of appearance tendered by the defendant.

It is apparent that the first ground is the substantive ground. The second and third grounds are subsumed under the first ground because the Insurance Company seeks to impeach the Registrar's authority to have issued the claim form and the statement of claim, and to refuse to accept the memorandum of appearance on its assertion in the first ground of appeal that CPR 2000 does not apply to the Court of Grenada.

Does CPR 2000 apply?

[6] The jurisdictional issue as it arose in the High Court was based on the assertion that CPR 2000 is not applicable because it was not properly published in Grenada, and, therefore, the Registrar should have accepted the Memorandum of Appearance under the 1970 Supreme Court Rules,[2] which remained in force.

[7] The learned judge found that Statutory Instrument No. 3 of 2001, which purported to repeal the 1970 Rules and to bring CPR 2000 into effect in Grenada[3] with effect from 31st December 2000 was not properly published because sufficiently reasonable steps were not taken to bring CPR 2000 to the notice of members of the public.[4] He held, however, that events had overtaken this conclusion because the entire text of CPR 2000 was printed and published by Statutory Instrument No. 1 of 2003 in the Official Gazette for 13th January 2003. This, he said, had cured

[2] Hereinafter referred to as "the 1970 Rules".
[3] The Instrument was styled 'the Eastern Caribbean Supreme Court Civil Procedure Rules 2000'. It was published in the Official Gazette of 6th July 2001.
[4] He cited as authority R v Sheer Metalcraft Ltd. [1954] 1Q.B 586, per Steatfield, J at p 590, where it was stated: "It is then upon the Crown to prove that, although it has not been issued, reasonable steps have been taken for the purposes of bringing the instrument to the notice of the public or persons likely to be affected by it."

any defect in publication and rendered that issue moot.[5] Statutory Instrument No. 1 of 2003 purported to make CPR 2000 effective in Grenada from 31st December 2000. It is noteworthy that this Statutory Instrument was published some months before Janin's claim against the Insurance Company was filed. There is no question that, in relation to any question of publication, the claim and subsequent proceedings thereon fell within the purview of CPR 2000.

[8] The Insurance Company has not sought to impeach the judge's finding that CPR 2000 has been properly published. Rather, the Company now urges this Court to find that CPR 2000 is not applicable to the Court of Grenada. The thrust of his submission is that while CPR 2000 contains the rules for the Eastern Caribbean Supreme Court, they are not the rules for the Court of Grenada, because the Court of Grenada is the Supreme Court of Grenada and the West Indies Associated States, not the Eastern Caribbean Supreme Court.

[9] The submissions which Mr. Knight, QC, learned Counsel for the Insurance Company made in support of the appeal may be summarized as follows: Before independence in Grenada, there was a common court for Grenada and the other Associated States of the Eastern Caribbean. This was the West Indies Associated States Supreme Court, which was established by the West Indies Associated States Supreme Courts Order 1967.[6] The Governments of the Associated States also entered into the West Indies Associated States Supreme Court Agreement, 1967[7] to establish that Court. Section 105 of the 1973 Independence Constitution of Grenada[8] established the Supreme Court of Grenada and the West Indies

[5] See paragraph 21 of the judgment. The body of Statutory Instrument No. 1 of 2003 reads: "Whereas by Statutory Instrument No. 3 of 2001 the EASTERN CARIBBEAN SUPREME COURT CIVIL PROCEDURE RULES 2000 were published by reference to the Schedule therein mentioned. AND WHEREAS it is desirous and expedient that the said Rules be printed and published by the Government Printery. NOW THEREFORE it is hereby ordered that the Rules referred to in the said Schedule are hereby published and are deemed to have come into effect in each of the Member States of the Territories of the Eastern Caribbean Supreme Court on 31st December 2000."

[6] Statutory Instrument No. 223 of 1967, made on 22nd February 1967 and referred to herein as "the 1967 Courts Order". It came into effect on 27th February 1967.

[7] Hereinafter referred to as "the 1967 Agreement".

[8] Statutory Instrument No. 2155 of 1973, which came into effect in February 1974.

Associated States. This is not the same Court as the Eastern Caribbean Supreme Court. Grenada did not become a member of the Eastern Caribbean Supreme Court because when the other Eastern Caribbean States entered into another Agreement in 1982[9] to establish this latter Court, Grenada was not a party to that Agreement. Section 105 of the Grenada Constitution preserves the 1967 Courts Order for Grenada for the purpose of Grenada having a Supreme Court of its own, which is styled the Supreme Court of Grenada and the West Indies Associated States.

[10] Mr. Sylvester, learned Counsel for the respondent, urged this Court to find that this challenge to the jurisdiction of the Court is spurious. He said that the challenge was merely intended to complicate and delay the matter and to deny Janin the fruits of the judgment which was given on its behalf since 2002.

[11] It will be recalled that the 1967 Courts Order, which was made pursuant to section 6 of the West Indies Act 1967 (U.K.), established the West Indies Associated States Supreme Court[10] as the Supreme Court for the then West Indies Associated States.[11] The 1967 Courts Order was followed by the Grenada Associated Statehood Constitution Order, 1967,[12] which was made pursuant to section 5 of the West Indies Act. The Parliament of Grenada subsequently enacted the West Indies Associated States Supreme Court (Grenada) Act, 1971.[13]

[12] On 24th February 1967, the Chief Ministers of the Associated States entered into the 1967 Agreement, to which the 1967 Courts Order had given the force of law. The British colonies of Anguilla, the British Virgin Islands and Montserrat later acceded to that Agreement, in which the governments stated their desire to enter into an arrangement for a common Supreme Court. Clause 4 of the Agreement

[9] The Eastern Caribbean Supreme Court Agreement 1982. Hereinafter referred to as "the 1982 Agreement".
[10] See section 4(1) of the 1967 Order.
[11] Antigua and Barbuda, Dominica, Grenada, St. Christopher, Nevis and Anguilla, St. Lucia and St. Vincent and the Grenadines.
[12] Statutory Instrument No. 227 of 1967.
[13] No. 17 of 1971.

named Grenada as the headquarters of the Court and of the Judicial and Legal Services Commission. The Government of Grenada was mandated to take steps to provide and maintain suitable headquarters accommodation for the Court and its officers and for the Commission.

[13] By Clause 5, the Governments agreed to take the necessary steps to appoint Registrars and Court Office staff. The Governments agreed, by Clause 6, to provide accommodation for the courts and judges in each State. They agreed on the basic financial arrangements for the courts,[14] for the auditing of the accounts of the courts[15] and for the inspection of courts' facilities. Under Clause 2(2), the Agreement would have ceased to have effect in any State which ceased to be an Associated State, but only if that State gave six months notice of its desire not to be further bound by the Agreement, or if such notice was given to a State Party by the other States Parties.

[14] When Grenada attained full independence, section 105 of its 1973 Independence Constitution incorporated the 1967 Courts Order that established the West Indies Associated States Supreme Court by reference. It states:

> "105. In this Chapter references to this Constitution shall be construed as including references to the Courts Order, which, subject to any provision made by Parliament under section 39 of this Constitution, shall continue to have effect as part of the law of Grenada and for that purpose–
>
> (a) the Supreme Court established by the Courts Order shall be styled the Supreme Court of Grenada and the West Indies Associated States;"

[15] The Supreme Court for Grenada remained the Court that was established by the 1967 Courts Order, and Grenada neither gave nor received notice pursuant to Clause 2(2) of the 1967 Agreement, which terminated its participation in the unified Court system under this clause. Thus, in Andy Mitchell and Others v Attorney General and Another,[16] Liverpool J.A. stated[17] that when Grenada

[14] Clause 7 of the Agreement.
[15] Clause 8 of the Agreement.
[16] Motion No. 1 of 1992 (Eastern Caribbean Court of Appeal, 8th November 1993).

became an independent Sovereign State the arrangements to participate in the unified court system with the other States which were signatories to the 1967 Agreement continued uninterrupted.

[16] The signatories to the 1967 Agreement, except Grenada, as well as the British Virgin Islands and Montserrat, entered into the 1982 Agreement, which replaced the 1967 Agreement. Both Agreements had similar provisions. Grenada was not a party to the 1982 Agreement because it had its own Supreme Court system established by the PRG. This was not a constitutional court. It was held in Andy Mitchell to have its authority by virtue of the doctrine of necessity. The court established by the 1967 Courts Order continued to be the constitutional court for Grenada.

[17] Under the 1982 Agreement, St. Lucia became the headquarters of the common court, which was referred to as the Eastern Caribbean Supreme Court. It will be recalled that when the People's Revolutionary Government (PRG) assumed power in Grenada in an armed revolution in 1979, the West Indies Associated States Supreme Court withdrew from Grenada. The PRG repealed the West Indies Associated States Supreme Court (Grenada) Act, 1971, and purported to alter the constitution of Grenada by establishing a revolutionary Supreme Court. This was done by passing the People's Laws Nos. 4 and 14 of 1979, which also purported to vest the powers of the Supreme Court of Grenada and the West Indies Associated States in the revolutionary Supreme Court.[18] These Laws were not passed in accordance with the requirements which section 39 stipulated for the alteration of the Constitution. They therefore had no proper legal effect in so far as they purported to change the Supreme Court of Grenada.

---

[17] At page 22 of the judgment.

[18] See also the People's Law No. 84 of 1979, entitled The Privy Council (Abolition of Appeals) Law, which abolished appeals to the Privy Council from the prescribed day – 13th May 1979.

[18] In Andy Mitchell, this Court accepted[19] that Grenada's return to the common court was properly completed when its legislature passed the Constitutional Judicature (Restoration) Act, 1991;[20] the West Indies Associated States Supreme Court (Grenada) Act (Re-enactment) Act, 1991;[21] and the Magistrates Judgments (Appeals) Act, 1991.[22] Additionally, Grenada acceded to the 1982 Agreement and, accordingly, the Eastern Caribbean Supreme Court (Application to Grenada) Agreement also came into effect from 16th August 1991. The 1991 Re-enactment Act re-enacted the West Indies Associated States Supreme Court (Grenada) Act, 1971. Section 4(1) of the 1991 Restoration Act restored the 1967 Courts Order in its entirety. Section 9 of the 1991 Restoration Act states:

> "From and after the appointed day the West Indies Associated States Supreme Court may be known and referred to in Grenada as the Eastern and referred to in Grenada as the Eastern Caribbean Supreme Court."[23]

[19] It is noteworthy that in his judgment in Andy Mitchell, Sir Vincent Floissac CJ stated:[24]

> "… the express objects of the Restoration Act and the Re-enactment Act were to abolish the so called Former Supreme Court … and to restore the original Supreme Court which is now known as the Eastern Caribbean Supreme Court and which includes this Court of Appeal. In other words, the legislative intention was to replace the Revolutionary Supreme Court by the Constitutional Supreme Court of Grenada and for this purpose to terminate the suspension of the [1967] Courts Order."

[20] Mr. Knight contends that section 105 of the Grenada Constitution preserves the 1967 Courts Order for Grenada for the purpose of Grenada having a Supreme Court of its own. Grenada is part of 'the Supreme Court established by the Courts

---

[19] See generally the judgments of Sir Vincent Floissac CJ., but pages 9, and 15 to 16 of his judgment, in particular, and Liverpool JA, particularly pages 24 to 25 of the judgment.

[20] No. 19 of 1991, which came into force on 16th August 1991. Hereinafter referred to as "the 1991 Restoration Act".

[21] No. 20 of 1991. Hereinafter referred to as "the 1991 Re-enactment Act"

[22] No. 21 of 1991.

[23] In fact, in the 1990 Revised Edition of the Laws of Grenada, section 4(1) of the 1967 Courts Order is in mandatory terms. It states: "There shall be a Supreme Court for the [Member] States which shall be styled the Eastern Caribbean Supreme Court …".

[24] At page 3 of the judgment.

Order', which, however, in relation to Grenada 'shall be styled the Supreme Court of Grenada and the West Indies Associated States'. The same Court, in relation to all the other States and Territories, is styled the Eastern Caribbean Supreme Court.[25] It is the same Court, differently styled in its application to Grenada by the operation of section 105 of the 1973 Constitution.

[21] The merit of Mr. Knight's contention is limited to the name of the Court when exercising jurisdiction in and over Grenada. In so far as he seeks to contend that Grenada has a Supreme Court of its own, that contention is true, not only for Grenada, but for each of the States and Territories. That Court in each case is the Supreme Court established by the 1967 Courts Order, which has been amended, in relation to the various States as they have attained independence or otherwise, by changing the name by which the Court shall be styled, but in every case preserving the Court created by the 1967 Courts Order. Perhaps, Grenada's Court is only styled differently because Grenada was the first of the States, which subscribe to that Court, to attain independence in 1974, at which time the others were still Associated States, so that the Court was styled, in relation to Grenada, 'the Supreme Court of Grenada and the Associated States'. When the Commonwealth of Dominica became independent in 1978, the same Court was styled, in relation to Dominica, the Eastern Caribbean Supreme Court, and so in relation to each of the other States as they became independent. There is therefore no merit in substance to Mr. Knight's contention.

[22] In the second place, Mr. Knight insists that CPR 2000 is not applicable to Grenada because it states that they are the rules governing procedure in the Eastern Caribbean Supreme Court, while by virtue of section 105 of the 1973 Constitution, the Supreme Court for Grenada is styled the Supreme Court of Grenada and the West Indies Associated States. The basic premise of this assertion is that since section 105 of the 1973 Constitution provided a particular style for the Supreme

[25] See, for example, The Supreme Court Order, Chap. 80 of the Revised Laws of the British Virgin Islands; section 4 of the Supreme Court Order, Chap. 2:01 of the Revised Laws of St. Lucia, and section 4 of the Supreme Court Order Chap. 4:01, section 4(1) by amendment made by S.I. 1978 (No. 1027 (U.K.).

Court of Grenada, CPR 2000 could be applicable to Grenada if it refers to the Court only by the style stated in section 105. It could only be applicable if there is legislation which clearly shows that the change in the style of the Court to 'the Eastern Caribbean Supreme Court' was passed in compliance with the procedures under section 39 of the 1973 Constitution to amend section 105(a) of the Constitution.

[23] It is noteworthy, however, that section 9 of the 1991 Restoration Act, which is reproduced in paragraph 17 of this judgment, is permissive only. Mr. Sylvester, learned Counsel for Janin, submitted that this permissiveness renders it innocuous because it merely provides an alternative name. He submitted that, accordingly, there could be no objection, on the ground of inconsistency, to the use of the style 'The Eastern Caribbean Supreme Court' in CPR 2000' to refer to the constitutionally established court for Grenada.

[24] I do not think that the issue of inconsistency arises in the present case. In Andy Mitchell, Sir Vincent Floissac stated[26] that when the Supreme Law Clause of the Grenada Constitution is considered,[27] the test of unconstitutionality of legislation is inconsistent with the constitution. Inconsistency, he said, arises if the impugned legislation is not in accord with an express provision of the constitution or with a basic principle implicit in the constitution. There is no question of inconsistency with an implied basic principle in this case. According to Chief Justice Floissac, notable examples of express inconsistency are laws that are enacted in violation of prescribed constitutional procedures or formalities; laws which contravene express limitations imposed on the legislative powers of Parliament, or laws which violate any of the fundamental rights provisions of the constitution.[28] On these

[26] At page 5 of the judgment.
[27] This is section 106. It states "This Constitution is the supreme law of Grenada and, subject to the provisions of this Constitution [the entrenching provisions of section 39, in particular] if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void."
[28] At page 5 of the judgment.

premises, the Chief Justice concluded, in Andy Mitchell,[29] that the 1991 Restoration Act did not constitute an alteration of the 1973 Constitution or the 1967 Courts Order, because it did not contradict any express provisions and was not inconsistent with any express provisions of the 1973 Constitution or the 1967 Courts Order. The Chief Justice observed[30] that the 1991 Restoration Act simply sought to engender a factual, as distinct from a constitutional, restoration of the constitutional judicature, the constitution and the 1967 Courts Order and was legislation for practical purposes.

[25] Inasmuch as this Court held, in Andy Mitchell, that the 1991 Restoration Act does not contravene any express provisions of the 1973 Constitution or the 1967 Courts Order, it is late in the day to assert that section 9 of that Restoration Act is not effective to permit the Chief Justice to make rules of the Supreme Court for Grenada, under the name 'the Eastern Caribbean Supreme Court'. In any case it seems clear that the compendium of the 1991 legislation referred to in paragraph 17 of this judgment, and Grenada's accession to the 1982 Agreement were intended for the practical purpose of returning Grenada to the common regional Supreme Court. They achieved that purpose. At the time of the restoration, that common court was referred to as the Eastern Caribbean Supreme Court.

[26] Since CPR 2000, which expressly repealed the 1970 Supreme Court Rules, was made by the Chief Justice under section 17 of the 1967 Courts Order with the alternative reference provided by section 9 of the 1991 Restoration Act, as the rules to govern the practice and procedure for that common court, CPR 2000 were properly made for the Supreme Court for Grenada for the purpose of governing the practice and procedure in civil cases in Grenada. CPR 2000 does not breach the Constitution, since it does not abolish the Court or substitute for it a new Court, but merely makes procedural rules for the Court. The appeal therefore fails.

---

[29] At page 8 of the judgment.
[30] Ibid.

[27] Even if the Court is styled in CPR 2000, in error for Grenada, the Eastern Caribbean Supreme Court, CPR 2000 must be read, in their application to Grenada, as referring to the Supreme Court of Grenada and the Associated States. It would only be for the Chief Justice to take such steps as may be needed to formalize the necessary amendments.

Result and Order

[28] In the foregoing premises, the appeal is dismissed. The appellant, Grenadian General Insurance Company Limited, shall pay the costs of the respondent, Janin, on this appeal, to be calculated on a prescribed costs basis, if not agreed. The Registrar shall, within 14 days of the date of this judgment, set down the Judgment Summons for directions or hearing before the master or a judge of the High Court.

Hugh A. Rawlins
Justice of Appeal

I concur.

Michael Gordon, QC
Justice of Appeal

I concur.

Ola Mae Edwards
Justice of Appeal [Ag.]