SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

HCVAP 2008/012

BETWEEN:

BEATRICE ANTOINE
(by her Attorney – on – Record MILTON THOMAS)

Applicant

and

EDWARD DEWITT JOHN

Respondent

Before:
The Hon. Mr. Denys Barrow, SC — Justice of Appeal

Appearances:
Mr. Emery Robertson of Robertson & Robertson for the applicant

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2008: October 24.

REASONS FOR DECISION

[1] These are the reasons for the decision of this court dated 24th October 2008 refusing an application for an extension of time for filing a notice of appeal against the judgment of Matthew J (Ag.), dated 16th May 2008.

[2] The grounds contained in the notice of application stated that the applicant failed to file a Notice of Appeal within the six weeks period provided by the **Civil Procedure Rules 2000** (**CPR 2000**)[1] but stated that the application for an extension of time to do so was made

[1] Rule 62.5 (c)

within the extended period of one month as provided by the **Court of Appeal Rules.**[2] In fact this rule was revoked by the **Rules of the Supreme Court 1970**.[3] No special provision is now made for delays which are less than one month; rule 62.16(1)(c) of **CPR 2000** now makes a generally applicable provision for an extension of time and the requirements that must be satisfied for obtaining an extension do not discriminate by reference to a cut-off date.

[3] The grounds in the notice of application further stated that the reason for the delay was that the applicant was awaiting legal advice on the prospects of her appeal. The grounds stated that the six weeks period for appealing expired before the applicant got this advice. They went on to state that the applicant instructed another counsel who acted promptly on the matter and filed this application.

[4] It was the local agent for the applicant who swore the affidavit in support of the application. That affidavit indicated the applicant resides in England and is eighty-two years of age. One infers that it was inconvenient for the applicant to swear an affidavit. The convenience of having the local agent swear the affidavit in support carried its own problems however, because he said nothing in relation to the excuses presented in the grounds in the notice of application. Thus, there was no statement that the applicant delayed because she was awaiting legal advice, that she took any (and if so what) steps to obtain such legal advice, what response she received, and why she waited as long as she did before seeking the services of the current lawyer.

[5] The principles which guide the court's exercise of discretion on whether to extend time for appealing are contained in rule 26.8 of **CPR 2000**, which deals with relief from sanctions for non-compliance. Rule 26.8 reads as follows:

> "1. An application for relief from any sanction imposed for a failure to comply with any rule, order or direction must be –
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> (a) made promptly; and
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> (b) supported by evidence on affidavit.

[2] Rule 14 (3) states: "A judge of the Court may by order extend the time prescribed in paragraph (1) of this rule within which an appeal may be brought, provided an application for this purpose is made within one month of the expiration of the time so prescribed."

[3] Schedule 3 (Rules and Orders revoked), Saint Vincent and the Grenadines Statutory Instrument, No. 2 of 1970.

2. The court may grant relief only if it is satisfied that –
    (a) the failure to comply was not intentional;
    (b) there is a good explanation for the failure; and
    (c) the party in default has generally complied with all other relevant rules, practice direction, orders and directions.

3. In considering whether to grant relief, the court must have regard to –
    (a) the effect which the granting of relief or not would have on each party;
    (b) the interests of the administration of justice;
    (c) whether the failure to comply has been or can be remedied within a reasonable time;
    (d) whether the failure to comply was due to the party or the party's legal practitioner; and
    (e) whether the trial date or any likely trial date can still be met if relief is granted."

[6] In **Dominica Agricultural and Industrial Development Bank v Mavis Williams**[4] the court reasoned that the thinking behind rule 26.8 included preventing abuse of the court's process. The court stressed that under rule 26.8(2) the court may not grant relief from sanction if the failure to comply was intentional and there was no good explanation for the failure. In the present application there was simply no evidence to support the bald statement in the grounds to the broad effect that the applicant sought legal advice, she was let down by her initial counsel and had to seek the assistance of new counsel. The application as presented is incapable of satisfying the requirements of the rules for granting relief from sanctions. The court is no longer able to exercise, as it did in the past, an "unfettered discretion"[5] and relieve against sanctions where the defaulter fails to satisfy a particular criterion.[6]

[7] In any case, I am satisfied there is no realistic prospect of success on appeal. The evidence in the trial supported the respondent's claim that the land should be sold to him since he acted to his detriment in reliance on his grandfather's promise to sell him the land. Matthew J (Ag) concluded, by reference to specific aspects of the evidence that the deceased grandfather and his wife, the applicant, whom the judge expressly treated as a part owner of the land, acted in a manner fully consistent with this evidence. The judge

[4] Civil Appeal No. 20 of 2005
[5] Per Singh JA in Quillen v Harney Westwood & Reigels (No.1) (1995) 58 WIR 143 at p. 145
[6] Which the court expressly decided to do in Quillen v Harney Westwood & Reigels.

therefore decided the case on the basis of proprietary estoppel as enunciated in **Ramsden v Dyson**[7], **Pascoe v Turner**[8] and **Taylors Fashion v Liverpool Victoria Trustees Co Ltd.**[9]

[8] None of the proposed grounds of appeal is capable of succeeding. The principal ground and foundation of the appeal is that the trial judge failed to direct his mind to the fact that the applicant was part owner of the property, which was the matrimonial home of the husband and wife, and that her interest was protected by the **Matrimonial Homes Act**.[10] In fact it is clear, even on a cursory reading of the judgment, that Matthew J repeatedly made reference to the wife as part owner and treated her as such.[11] Further, the judge indicated at paragraph [40] of the judgment that he believed that the applicant was a party to, or privy to, the discussions between the respondent and his grandfather to sell the property to him. This conclusion followed the respondent's testimony, which the judge quoted in paragraph [32], that the applicant was sitting between the respondent and his grandfather when his grandfather gave him permission to take possession of the land and build on it. There is no contrary evidence on which the judge's finding could be upset. There is no evidential basis that would permit the applicant to argue against the conclusion, which flowed inexorably from the evidence, that a part owner of property who acquiesced in the arrangement for the sale of the property and thereby encouraged detrimental reliance on that arrangement was bound by it.

[9] It is for the reasons I have stated that I refused the application for an extension of time for appealing. The respondent took no part in the proceeding and so no order for costs was made.

Denys Barrow, SC
Justice of Appeal

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[7] (1866) L.R. 1 H.L. 129
[8] [1979] 2 All E.R. 945
[9] [1982] Q.B. 133
[10] Cap 177 of the Laws of St. Vincent and the Grenadines 1990
[11] Paragraphs [2], [8], [26], [35], [37] and [39] of the Judgment