

ST. CHRISTOPHER AND NEVIS

IN THE COURT OF APPEAL

HCVAP 2008/005

BETWEEN:

WYCLIFFE BAIRD

Appellant

and

[1] DAVID GOLDGAR

[2] PAUL B. COBURN

[3] CARIBE (REALTIES) CANADA

LIMITED/IMMUEBLES CARIBE CANADA LTEE

[4] CARIBE (REALTIES) CANADA LTD

[5] BETTS REALTY LIMITED

[6] S.P.A.S. LIMITED

[7] FIRST SECURITY BANK OF UTAH

Respondents

Before:

The Hon. Mr. Denys Barrow, SC

Justice of Appeal

On paper:

Terrence Byron for appellant

Damien Kelsick for respondent

2008: November 18.

DECISION

[1] A Certificate of Result of Appeal was issued by the Acting Chief Registrar dated 15th August 2008. That certificate was faxed to the lawyers on both sides and the High Court Registrar on 18th August 2008.

- [2] The Certificate certified that an order was made in the captioned appeal in certain terms including that costs of the appeal were awarded to Mr. Baird in the provisional sum of \$5,000.00. Following that order the certificate continued:
- "5. If either side wishes to make representations on the quantum of costs, it must file a skeleton argument within 21 days of the date of this decision and the other side may file a skeleton argument in response within 14 days."
- [3] On 17th October 2008, the appellant filed submissions on the issue of costs (not a skeleton argument). At paragraph 51 of these submissions counsel stated he did not receive a copy of the "Reasons for Judgment" until 24th September 2008. It is apparent that counsel is stating that the 21 days for filing a skeleton argument ran from the day he received the reasons.
- [4] I do not see how that could be so. The certificate is the order that issues at the **conclusion** of an appeal; rule 62.24. In the former language of practice, it constitutes the perfecting of the order. It marks the end of the appeal. The court cannot change its order, it cannot further adjudicate on the appeal (save for any matter on which it reserves jurisdiction, such as costs, as in this case). The decision of the court becomes immediately enforceable.
- [5] Rule 42.8 states a judgment or order takes effect from the day it is given or made, unless the court specifies that it is to take effect on a different date. In this case the court specified that the appellant must file a skeleton argument "within 21 days of the date of **this decision**" (emphasis added). It was simply not open to the appellant to decide that time should run from a different date.
- [6] The court felt itself obliged to dispose of the procedural appeal with the dispatch that **CPR 2000** requires. Accordingly, it decided this appeal during the court vacation and perfected and issued its order during this period. A similar adherence to the requirement of dispatch was required of counsel.

[7] In the circumstances I must accept the validity of the submission made by the lawyers for the respondents that the representations on costs by the appellant were filed over a month out of time. The provisional nature of the order as to quantum of costs ceased after 21 days of the court's decision and became final.


Denys Barrow, SC
Justice of Appeal