

ST. CHRISTOPHER AND NEVIS

IN THE COURT OF APPEAL

HCVAP 2008/010

BETWEEN:

[1] CHARLES DE BARBIER
[2] KARL HEINZ HIBBELN

Applicants/Defendants

and

ROLAND LEDUC

Respondent/Claimant

Before:

The Hon. Mde. Ola Mae Edwards

Justice of Appeal [Ag.]

On Written Submissions of:

Ms. Denise Lee of the firm of Daniel Brantley & Associates
for the applicants/defendants

No Written Submissions from:

Mr. Geoffrey Romany on record for the respondent/claimant

2008: December 8.

Civil Appeal – notice of application – extension of time to file notice of appeal – oral judgment – no reasons given for decision – when does a judgment take effect – Part 42 of the Civil Procedure Rules (CPR) 2000 – Rules governing appeals – Part 62 of CPR 2000

The learned trial judge in delivering an oral judgment gave no reasons for her decision. The learned judge found in favour of the respondent/claimant and awarded costs to him and informed counsel for the parties that a written judgment would follow. The oral judgment or order was not drawn and served on the parties. The problem arose when counsel for the applicants/defendants was instructed to lodge an appeal in the absence of the court's reasons for its decision or a written judgment. It was therefore not possible for the applicants/defendants to file their notice of appeal giving grounds for the appeal.

Held: that the application for extension of time to file the notice of appeal is not necessary having regard to CPR 62.5(c). The time for filing the notice of appeal will commence from the date when the written judgment or order is served on the applicant. There will be no order as to costs.

- (1) That the learned judge ignored rules 42.5, 42.6, and 62.5(c) which contemplate that for the purposes of appealing against a final order or judgment whether oral or written, the judgment or order must state reasons, and must be drawn up by the court and served by the court office unless the learned judge directs otherwise.

JUDGMENT

- [1] **EDWARDS, J.A. [AG.]:** This is a Notice of Application dated 29th July 2008 for an order extending the time within which to file a Notice of Appeal against an oral judgment delivered on Friday, 27th June 2008. The learned trial judge in the presence of learned counsel Ms. Lee and Mr. Romany, delivered an oral judgment after a trial lasting 2 days. The learned judge indicated that she found in favour of the claimant with costs awarded to him in the sum of \$14,000.00. No reasons for the decision were proffered at that time. The court however informed counsel that a written judgment would be ready for delivery on Monday 30th June 2008.
- [2] Counsel for the applicants (the defendants in the court below) having been instructed to lodge an appeal against this oral judgment, waited for the delivery of the written judgment which was not forthcoming up to 24th November 2008. On 1st July 2008 the applicants'/defendants' counsel filed an application seeking a stay of execution of the judgment pending the outcome of the intended appeal.
- [3] The learned trial judge heard the application and on 3rd July 2008 made the following order:

"That execution of the Judgment delivered on Friday 27th June 2008 be stayed on condition that the Defendants/Appellants file a Notice of Appeal in the time prescribed by Part 62 of the **CPR 2000** or in accordance with any order of the Court."
- [4] On 29th July 2008 the present application was made by the applicants/defendants on grounds which include that in the absence of the court's reasons for its decision it is not possible for the applicants/defendants to file their notice of appeal giving grounds for the appeal.

[5] It appeared to me at a case management hearing on 18th November 2008 that a preliminary question arising on the present application was whether or not the time for filing the notice of appeal had commenced from the date of delivery of the oral judgment.

[6] Consequently, I made an order issuing the following directions:

- "1. The matter is adjourned for further case management by Edwards JA [Ag.] on the 8th day of December, 2008 for the appellants to file and serve on or before 28th November, 2008 pursuant to CPR 62.5(c):
 - (a) a copy of the order and/or oral judgment that was served on them; and
 - (b) an affidavit explaining whether or not the oral judgment or order was served on them and the details of such service.
2. The respondent to file a notice indicating whether the application is being opposed in compliance with Practice Direction No. 2 of 2008 PD 2(b)(ii) on or before 28th November, 2008 along with an affidavit in opposition where necessary, and skeleton arguments if it is being opposed."

[7] The supplemental affidavit of Ms. Nakia Jones sworn on 24th November 2008 has confirmed that there is no evidence that the oral judgment was entered on the court file, as at 21st November 2008; and up to 24th November 2008 the Chambers of Daniel, Brantley & Associates had not been served with a written copy of the judgment and/or order.

The Relevant Rules Governing Judgments and Orders

[8] Part 42 of **Civil Procedure Rules 2000** deals with judgments and orders. CPR 42.2 states that:

"A party who is – (a) notified of the terms of the judgment or order by telephone, FAX or otherwise; or (b) present whether in person or by legal practitioner when the judgment was given or order was made; is bound by the terms of a judgment or order whether or not the judgment or order is served."

[9] CPR 42.5 governs the drawing up of judgments and orders. It states:

- "(1) Every judgment or order must be drawn by the court, unless -
 - (a) the court directs a party to draft it;
 - (b) a party with the permission of the court agrees to draft it;
 - (c) the court dispenses with the need to do so; or

- (d) it is a consent order under rule 42.7.
- (2) Where a draft of an order is directed it must be filed no later than 7 days from the date on which the direction was given so that the court office may seal the order.
- (3) If a party fails to file a draft of an order within 7 days after the direction was given any other party may draw and file the order.
- (4) A party who drafts an order must file sufficient copies for service on all parties who are to be served."

[10] Rule 42.6 stipulates:

- "(1) Unless the court otherwise directs the court office must serve every judgment or order on –
 - (a) every party to the proceedings in which the judgment or order is made; and
 - (b) any other person on whom the court orders it to be served.
 * Part 6 deals with service.
- (2) Where a party is acting by a legal practitioner, the court may direct that any judgment or order be served on the lay party as well as on the legal representative."

[11] CPR 42.8 states that:

"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."

Appeals to the Court of Appeal Regime

[12] The rules governing appeals are contained in **The Court of Appeal Rules 1968** as amended and Part 62 of **Civil Procedure Rules 2000**. Part 62 prescribes the procedure including how to appeal, when to appeal, and the contents of a notice of appeal. CPR 62.3(1) states that:

"An appeal is made in the case of an appeal from the High Court by filing a notice of appeal at the court office **where the judgment was entered.**"

CPR 62.5 states that:

- "The notice of appeal must be filed at the appropriate court office –
 - (a) in the case of a procedural appeal - within 7 days of the date the decision appealed against was made;
 - (b) if leave is required - within 14 days of the date when such leave was granted; or
 - (c) in the case of any other appeal - within 42 days of **the date when the order or judgment appealed against was served on the appellant.**"

[13] Rule 62.4(1) stipulates that:

"A notice of appeal must...give details of –

- (a) any power which the appellant wishes the court to exercise;
- (b) the decision which is being appealed, identifying so far as practicable any finding of –
 - (i) fact; and
 - (ii) law;which the appellant seeks to challenge;
- (c) the grounds of the appeal; and
- (d) the order the appellant seeks."

[14] Before the **Civil Procedure Rules 2000, Order 64** rule 5(1) which replaced rule 14(1) of the **Court of Appeal Rules 1968** in similar terms provided for such appeals to be brought:

"after the expiration of six weeks from the date of judgment delivered or order made, against which the appeal is brought... "

There was no requirement for service of the order or judgment as a mandatory prerequisite to the filing of the notice of appeal. In fact CPR 62.5(c) stands out for its uniqueness when compared with the relevant provisions in rule 52.4 of the English CPR, rule 61:04(1) of the **Canadian Rules of Civil Procedure 1990**; and rule 62.6(c) of the Barbados Civil Procedure Rules which all require such notices of appeal to be filed within the requisite number of days after the date of the decision of the lower court; or of the date when the order or judgment appealed from was made or given.

[15] Though rules 42.2(b) and 42.8 appear to conflict with rule 62.5(c) it seems obvious that rules 42.2(b) and 42.8 do not apply on the present facts. Rule 42.1 seems to make this very clear by stating that:

"...Part [42] does not apply to the extent that any other rule makes a different provision in relation to the judgment or order in question."

[16] CPR 62.5(c) establishes a different criterion by providing for the 42 days to run from the date the impugned judgment or order has been **served on the appellant**. Rule 62.5 compels a focus on CPR 42.5, a rule which requires the court to draw up **every judgment or order** except in the circumstances mentioned in rules

42.5(a) to (d); and rule 42.6 which mandates the court office to serve every judgment or order on the persons specified in rule 42.6(1)(a) to (b) and 42.6(2) unless the court otherwise directs.

[17] The practice of giving oral judgments is a useful tool which must be encouraged whenever possible. But an oral judgment rendered without any reasons whatsoever encourages a dissatisfied party to file a notice of appeal which is vague and in general terms. CPR 62.4(6) frowns on such a notice of appeal where it provides for the court to strike out any ground of appeal that discloses no reasonable ground of appeal or is vague and in general terms. The oral judgment should be in a form which makes it appealable, having regard to the rules.

[18] In the present case the learned trial judge apparently ignored rules 42.5, 42.6, and 62.5(c) which contemplate that for the purposes of appealing against a final order or judgment whether oral or written, the judgment or order must state reasons, and must be drawn up by the court and served by the court office unless the learned judge directs otherwise.

[19] A good practice which circumvents the task of the trial judge or a judge in chambers or a master having to subsequently interpret or determine on an application the terms of the order that was made on his/her judgment or order is to specify the order at the end of the judgment. This practice gives effect to the overriding objective in CPR 1.1 where it eliminates delay in drawing up the order, saves expenses for litigants, and assists in dealing with the case expeditiously.

Order

[20] This application for extension of time to file the notice of appeal is therefore unnecessary having regard to CPR 62.5(c). The time for filing the notice of appeal will commence from the date when the written judgment or order is served on the applicant. There will be no order as to costs.

Ola Mae Edwards
Justice of Appeal [Ag.]