

SAINT CHRISTOPHER AND NEVIS

IN THE COURT OF APPEAL

HCVAP 2008/013

BETWEEN:

SUSAN BARBARA DODGE
(Appointed as Trustee of the Estate of RAYMOND ARNOLD DODGE
also known as RAY DODGE)

and

TONY ZAPPAROLI

Respondents/Claimants

and

MICHAEL SIMANIC

1st Defendant

and

ROYAL ST. KITTS CASINO LIMITED

and

ALCEO ZULIANI

Applicants/Intended Appellants

and

LEO TOFOLI

4th Defendant

Before:

The Hon. Mde. Janice George-Creque

Justice of Appeal

On Written Submissions of:

Mr. Glenford Hamilton of the firm of Hamilton and Co. for the Applicants/Intended appellants

Frank E. Walwyn of the Chambers of Caribbean Associated Attorneys
on behalf of the Respondents/Claimants

2009: February 24;
March 10.

JUDGMENT

- [1] **GEORGE-CREQUE, J.A.:** On 18th December 2008, the applicants being the 2nd and 3rd defendants in the court below made application for leave to appeal to the Court of Appeal against the decision of the Order of the judge made on 5th December 2008, and also for a Stay of that Order. It is supported by the affidavit of Jason Hamilton filed on the same date. This affidavit is quite short and does not seek to set out the basis on which leave or a stay is being sought. It merely seeks to suggest that the judge's ruling and directions given on 5th December 2008 are in conflict with or contrary to his earlier decisions made on 4th December 2006, and 22nd November 2007. In that decision the judge opined that it was not possible to register a foreign judgment in rem, in this case **Canadian**, relating to foreign land. The learned judge further stated that there were orders of the Canadian Court which affected title to certain lands in St. Kitts and that such an order would be unenforceable. The applicants also say that matters which formed part of the claim which was heard in Canada was set down for hearing in St. Kitts notwithstanding that the judge ruled that the defendants are estopped from re-litigating those matters. Neither the decision of the learned judge of 22nd November 2007, nor the Order of 5th December 2008 has been submitted by the applicants.
- [2] For completeness it is noted that Judgment in Default of Defence was entered against the 1st defendant on 31st December 2002. The 4th defendant is not being pursued. The 1st defendant does not seek leave to appeal nor has he appealed the judgment so entered or the order made on 22nd November 2007, dismissing his application to set aside the said judgment.
- [3] On 5th January 2009, an affidavit was filed on behalf of the respondents in which they opposed the application for leave and a stay. They have helpfully exhibited the decision of 22nd November and have also sought to provide the history of the proceedings as well as an account of the hearing before the learned judge on 5th December 2008, leading to the case management directions in respect of the issues which were to proceed to trial. They also accounted for the lack of the

sealed Order containing those directions, the same not having as at that date been sealed by the court.

[4] On 20th January, the application came up for case management before Edwards J.A. It was ordered and directed that the application be adjourned to 24th February 2009, for determination by a single judge on paper. She further directed that the applicants transmit to the Court of Appeal a copy of the Order of the Judge made on 5th December 2008, (being the Order in respect of which leave and the stay is being sought) by 30th January 2009, and that the applicants file, serve and transmit their written submissions in support of the application in compliance with **Practice Directions No.2 of 2008 and 3 of 2008** by 9th February 2009, and for the respondents to file and serve theirs by 12th February 2009.

[5] The Order containing these directions was transmitted by the court office to the solicitors for the applicants and the respondents on 23rd January 2009. By then¹ the respondents had already filed their written submissions in opposition to the grant of leave and a stay. To date the applicants have failed to comply with the practice directions as aforesaid and have further failed to comply with the directions contained in the Order of 20th January. They have sought no extension of time, nor have they sought relief from sanctions in respect of their failure.

[6] Having regard to the affidavit and submissions of counsel for the respondents and having perused the written decision of the learned Judge dated 22nd November 2007, coupled with the lack of compliance without explanation by the applicants, I have come to the view, which by inference the applicants may have also arrived at, that the application for leave and a stay is wholly unmeritorious.

¹ On 19th January, 2009

[7] Accordingly, the application is hereby dismissed. The applicants shall pay the costs of the respondents in the sum of \$1, 500.00.

Janice George- Creque
Justice of Appeal