

GRENADA

IN THE COURT OF APPEAL

HCVAP 2009/008

BETWEEN:

ONE CALL CONSTRUCTION COMPANY LIMITED
(Trading as One Call Collection Service)

Appellant

and

GRENADA SOLID WASTE MANAGEMENT AUTHORITY

Respondent

Before:

The Hon. Mr. Davidson Kelvin Baptiste

Justice of Appeal [Ag.]

Appearances by way of written submissions:

Jaime Bristol for the appellant

Daniella Williams Mitchell for the respondent

2009: November 13.

JUDGMENT

[1] **BAPTISTE, J.A. [AG.]:** This is a decision in a procedural appeal. One Call Construction Company Limited (the appellant) has appealed against the order of a judge made on 10th July 2009, refusing to grant leave to appeal a decision in which the judge found as a matter of law that the claim before the court was for the High Court to review the award of an arbitration tribunal and was therefore an appeal to which Part 60 of the **Civil Procedure Rules 2000** applied.

[2] The grounds of appeal are that the learned trial judge erred in law by failing to grant leave to appeal in that the proposed appeal does, as a matter of law, have a realistic prospective of success, and in refusing leave the learned trial judge failed to properly apply the test for granting leave to appeal. There is no dispute

between the parties that the applicable test for the grant of leave to appeal is that the appellant has to establish a realistic prospect of succeeding on the appeal. Both sides cited **Othneil Sylvester v Faelleseje**, a Danish Foundation, Civil Appeal No. 5 of 2005 (Saint Vincent and the Grenadines) as authority for that proposition. The Grenada Solid Waste Management Authority (the respondent) however contended that the appellant has not passed the test for determining whether or not to grant leave to appeal.

[3] I now give a brief background to the matter. By Fixed Date Claim the appellant claimed the following relief with respect to an award granted by an arbitration tribunal:

- "1. An Order that the award made between the parties to the arbitration by Dickon Mitchell, Monica Joseph and Lauriston Wilson Jr., the Arbitrators therein, may be remitted for the reconsideration by the said Arbitrators or set aside on the following grounds namely:
 - (i) The evidence which was to be part of the record of the proceedings and upon which the Arbitrators and the parties were to rely was not fully and accurately recorded and transcribed, as is admitted by the Arbitrators, resulting in unfairness to the Claimant.
 - (ii) The award is bad on the face of it because:
 - (a) Section 16(1) of the Contract relieves both parties from liability for failing to perform due to force majeure.
 - (b) There was a breach of clause 24 of the Agreement because the invocation of arbitration does not require an express refusal to agree to review of the contract price.
 - (iii) The Arbitrators deliberately ignored the applicable principles of law such that no reasonable arbitrator would have come to such conclusions.

Learned counsel for the appellant contended that the claim they made was not an appeal but rather a challenge of the proceedings and of the award made. Learned counsel stated that the **Arbitration Act** chapter 19 of the 1990 **Revised Laws of Grenada** made no provision for an appeal to the High Court but section 18 provided for an application to the High Court for a remission of an award and

section 19 provided for the setting aside of an award for misconduct of the arbitrator. Learned counsel for the respondent argued that the application to the High Court to remit or set aside the arbitral award under sections 18 and 19 of the **Arbitration Act** was in reality a review of the decision by a superior court of an inferior court or tribunal and was in effect an appeal to the High Court as defined in Part 60 of the **Civil Procedure Rules 2000**.

[4] In considering whether the intended appeal has a realistic prospect of success one has to consider the **Arbitration Act**, in particular sections 18 and 19 and Part 60 of the **Civil Procedure Rules 2000**. Section 18(1) of the **Arbitration Act** states that in all cases where there has been a reference to arbitration the court may, by order, remit for consideration by the arbitrator, any or every matter contained in the reference. Section 19(2) provides that where an arbitrator has misconducted himself or the proceedings or where an arbitration or award has been improperly procured, the court may set aside the award. Rule 60.0(1) of the **Civil Procedure Rules 2000** deals with appeals to the High Court from any tribunal or person under any enactment other than an appeal by way of case stated. Rule 60.2(1) states that an appeal to the court is made by issuing a fixed date claim form to which must be annexed the grounds of appeal. Rule 60.2(2)(b) provides that the appellant's ground of appeal must state the enactment enabling an appeal to be made to the court.

[5] It would appear on the totality of the law that the appellant/applicant has a realistic prospect of success. It is accordingly ordered that the order of the learned judge made on 10th July 2009 refusing to grant the appellant leave to appeal is set aside and the appellant is granted leave to appeal. The appellant is awarded costs of \$2,000.00 to be paid by the respondent.

Davidson Kelvin Baptiste
Justice of Appeal [Ag.]