GRENADA

IN THE COURT OF APPEAL

HCVAP 2011/017

In the Matter of the Arbitration Act, Cap 19 of the 1990 Revised Laws of Grenada

and

In the Matter of an Arbitration between Anthea De Bellotte and the Minister of Communications, Works and the Attorney General of Grenada

BETWEEN:

ANTHEA DE BELLOTTE

Appellant

and

[1] THE MINISTER OF COMMUNICATIONS, WORKS
[2] THE ATTORNEY-GENERAL OF GRENADA

Respondents

Before:

The Hon. Mr. Don Mitchell — Justice of Appeal [Ag.]

Appearances by written submissions:

Mr. Cajeton A. K. Hood, for the Appellants
Mr. Darshan Ramdhani, Solicitor General, Ms. Camille Gooding-DeSouza with him, for the Respondent

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2011: November 22.

Interlocutory appeal – Claim made by fixed date claim form seeking order to set aside the appellant's arbitration award – Application to strike out fixed date claim form – Sections 18 and 19 of the Arbitration Act, Cap. 19, Revised Laws of Grenada 1990 ("the Arbitration Act") – Whether the Government's fixed date claim form was capable of being construed as an application to remit or set aside an award filed pursuant to sections 18 and 19 of the Arbitration Act

Held: dismissing the appeal and confirming the order of the learned trial judge with costs to the respondent to be assessed if not agreed, that:

1. The learned trial judge was correct to have decided that the application of Government fell squarely within the requirements of sections 18 and 19 of the Arbitration Act.[1] Her decision to set down the matter brought by fixed date claim form for hearing on a date to be fixed by the Court Administrator was a proper exercise of her function as a case manager.

   One Call Construction Company Limited v Grenada Solid Waste Management Authority Grenada HCVAP 2009/014 (delivered 8th September 2010, unreported) followed.

DECISION

[1] MITCHELL, J.A. [AG.]: This is an interlocutory appeal by Anthea De Bellotte ("Ms. De Bellotte") against an order of the High Court in Grenada dismissing her application to strike out a fixed date claim form filed by Government and naming her as the defendant. As this is an interlocutory appeal it will not be necessary or appropriate to go into the facts of the disptute.

[2] The fixed date claim form which was the subject matter of the dispute had been filed on 22nd July 2010. By it, Government sought an order that the final arbitration award in Ms. De Bellotte's favour made on 14th June 2010 be set aside or remitted for reconsideration of the Tribunal together with the court's opinion on the question of law "the subject-matter of this appeal" on the ground that the Tribunal erred in law in a number of its findings.

[3] The claim sought an order that the time for "appealing" the interim award be extended and an order that the interim award be set aside or remitted for the consideration of the Tribunal together with the court's opinion on the question of law whether Ms. De Bellotte was an employee within the meaning of her contract and the Employment Act 1999,[2] thereby entitling her to maternity leave.

[1] Cap. 19, Revised Laws of Grenada 1990.
[2] Act No. 14 of 1999, Laws of Grenada.

Government also sought an order staying all proceedings, and an order staying the final award.

[4] On 17th September 2010, Ms. De Bellotte filed an application in the High Court under Rule 9.7(1) Civil Procedure Rules 2000 ("CPR"), supported by an affidavit of one Joseph Ewart Layne, seeking a declaration that the court had no jurisdiction to try the Government's claim and for an order striking out the fixed date claim form. The grounds for the application included, that Government described its claim as "an appeal" from the arbitration award and they were seeking to have the final award set aside or alternatively to have the matter remitted for reconsideration by the tribunal in addition to seeking the court's opinion on several questions of law forming the subject matter of their appeal on the ground that the tribunal erred in law. However, first, the Arbitration Act[3] did not make reference to an appeal process. Second, the Act did not make provision for parties to directly seek the court's opinion on a matter of law. Third, it was Part 60 CPR that provides for appeals to the High Court. CPR 60(2)(a) provides that the grounds of appeal must state the enactment enabling an appeal to be made to the court. Fourth, Part 61 CPR allows for appeals by way of case stated, and provides that parties may only apply for an order directing an arbitrator to refer a question of law to the court by way of case stated, and there is no provision allowing parties to refer a question of law to the court directly. Ms. De Bellotte further complained that the fixed date claim form did not identify the enactment that gave the right to appeal against the award or under which rule of CPR they framed their appeal. Finally, that the applicant intended to make an application that the Arbitrator's award be filed in court pursuant to section 69 of the Civil Procedure Act[4] and the respondents to the application would be given notice requiring them to show cause why the award should not be filed and this procedure will give the respondents a right of access to the court which is the correct way in which the respondents' issues should be addressed. Government's claim was therefore not properly before the court and the court ought not to exercise its jurisdiction to try the claim.

[3] Cap. 19, Revised Laws of Grenada 1990.
[4] Cap. 55, Revised Laws of Grenada 1990.

[5] Both the Government's fixed date claim form and Ms. De Bellotte's interlocutory application came before Price-Findlay J. in the High Court. She gave a decision on 7th July 2011. It is against that decision that this appeal lies. The learned trial judge ruled as follows:

> "[15] Even though the Applicants in their application make reference to the words "appeal" and "appealing", it is clear from paragraph 1 that the purport of the application is a request "to remit or set aside" the final award of the arbitrator. Further, in paragraph 3, they again request either remittance or setting aside of the award.
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> "[16] This places the application squarely within the requirements of sections 18 and 19 of the Arbitration Act. This is the power and the jurisdiction with which the Court is clothed under the Arbitration Act.
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> "[17] It is set out clearly in Halsbury's Laws 4th Edition, Vol 2 at para 616, the procedure to be followed in making a request to remit or set aside the award of an arbitrator.
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> "[18] "An application to remit or set aside an award must be made by an originating motion within six weeks after the award has been made or published to the parties. The notice of motion must state in general terms the grounds of the application, and, where the motion is founded on affidavit evidence ..."
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> "[19] I therefore find that this is not an appeal to be governed by CPR part 60 but an application challenging the award made by the arbitrator. Under the old rules this application would have been made by originating motion and is now made by way of Fixed Date Claim Form.
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> "[20] Even though the Claimants/Respondents have approached the Court by way of CPR Part 60, I find that this is not an appeal but an application to remit or set aside the award of the arbitrator.
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> "[21] I will treat the Fixed Date Claim Form as an application, and I find that the Court does have jurisdiction to hear the applications; however, as the application applies to the questions of law, I find that the Court has no jurisdiction to hear and determine those matters, as under section 31(1)

of the Act, it is for the arbitrator or umpire to state a case for the determination by the Court on questions of law.

"[22] I do not find that the applicant has *locus standi* to bring to this Court questions of law pursuant to the Arbitration Act.

"[23] In the circumstances, I find that the Court has jurisdiction to hear the matter and will exercise its discretion to do so.

"[24] The matter is hereby set down for hearing on a date to be fixed by the Court Administrator.

"[25] There is no order as to costs."

[6] On 22nd July 2011, Ms. De Bellotte applied for leave to appeal the decision of the learned trial judge and for a stay of execution. The application came before Pereira J.A., and by Directions given on 6th October 2011, Pereira J.A. gave leave to appeal, ordered a stay of proceedings in the court below, and directed, inter alia, that an appeal bundle and skeleton arguments be filed, and the appeal be determined on paper by a single judge. The skeleton arguments were duly filed and the matter has been passed to me for determination on paper. Let me take this opportunity to express my appreciation for the thorough and detailed submissions and legal authorities filed by both counsel in this matter.

[7] Counsel for Ms. De Bellotte urged that it was clear, both from the language employed by Government, particularly the use of the word "appeal", and from the substance of the claim, that Government sought to appeal against the award of the Arbitrator and to state a case by virtue of Part 60 CPR. The learned Solicitor General urged in response that the learned trial judge had made no error in finding as she did. He relied on the procedural exposition on remission pursuant to the UK equivalent of our section 18 in the UK Arbitration Act found in Atkin's Encyclopaedia of Court Forms in Civil Proceedings.[5] There we see at paragraph 26:

"26. Remission. In all cases of reference to arbitration the High Court or a judge thereof may from time to time remit the matters

[5] 2nd Ed., Volume 6, 1994 Issue.

> referred, or any of them, for the reconsideration of the arbitrator. This may take place on the hearing of a motion to remit, an appeal against the award, a motion to set aside the award, or an application to enforce the award."

Footnote 2 indicates this quotation is a reference to the powers of remission found in the UK under their Arbitration Act 1950, section 22(1).

[8] The Grenadian statute is the Arbitration Act.[6] This provides at section 18 for matters to be remitted by the Court to an arbitrator for reconsideration. This section is the subject of dispute between the parties. The section reads:

> "18. (1) In all cases where there has been a reference to arbitration the Court may, by order, remit for reconsideration by the arbitrator or umpire any or every matter contained in the reference.
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> (2) Where the Court has ordered that an award be remitted for reconsideration, the award must, unless the Court otherwise directs, be made within three months from the date of the order."

It will be a matter for argument before the court whether section 18 of the Grenada Act has the same effect, in light of the other provisions of the Act, as section 22(1) of the UK Act quoted above.

[9] Learned counsel for Ms. De Bellotte submits that in the Grenadian statute the word "reference" is defined by section 2(1). He submits that this provides that "reference" means a reference under an order made by the Court. Learned counsel submits that the word "reference" in section 18 when read in the light of the definition in section 2 must mean that under the Grenadian Arbitration Act a reference under section 18 occurs only when a dispute has been sent by the Court to an arbitrator for determination. It is only an award made in such a case that a court can refer back to the arbitrator. If this submission is correct, it would mean that the Grenadian provision is much more limited in its effect than the equivalent UK provision quoted above.

[6] Cap 19, Revised Laws of Grenada 1990.

[10] The learned Solicitor General replies that the interpretation of section 18 made by counsel for Ms. De Bellotte is misconceived. He points out that section 18 comes in the Act under the general heading "References by Consent out of Court". He emphasises the commencing words of the section, "In all cases", and submits that to limit the section 18 power only to cases where the initial arbitration was initiated by the court's reference is to ignore the plain words of the Act. By contrast, sections 24-28 come under the general heading "References under an Order of the Court". These are the sections, he submits, that apply to references under an order of the court. He submits that to read the word "reference" in section 18 to mean only a reference by the court, when the heading of this part of the Act in which section 18 falls is "References by Consent out of Court", would result in an absurdity. He relies on the English cases of Moran v Lloyd's,[7] and Mero-Schmidlin (UK) PLC v Michael McNamara & Company and Another.[8]

[11] Counsel for Ms. De Bellotte made several submissions concerning the effect of Part 60 CPR. This rule deals with appeals to the High Court from any tribunal or person under any enactment other than an appeal by way of a case stated.[9] It provides that an appeal to the court is made by issuing a fixed date claim form to which must be annexed the grounds of appeal.[10] The grounds of appeal must state the decision against which the appeal is made, the enactment enabling an appeal to be made to the Court; the name of the tribunal or person whose decision is being appealed; the facts found by the tribunal; and the grounds of appeal.[11] Other than the specific instances mentioned in the Arbitration Act there is no general provision in the Rules enabling an appeal to be made against the award of the arbitrator, so that Part 60 CPR does not assist the Government in this case, and the learned trial judge so ruled in effect at paragraph 20 of her decision. The learned trial judge has, in my view, correctly found that this fixed date claim form is not an appeal against the award of the Arbitrator.

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[7] [1983] 2 All E.R. 200.
[8] [2010] IEHC 393.
[9] CPR 60.1(1).
[10] CPR 60.2(1).
[11] CPR 60.2(2).

[12] Counsel for Ms. De Bellotte also made several submissions concerning the effect of Section 31 of the Arbitration Act. This section provides for a case to be stated by an arbitrator to the High Court. A case stated is not strictly an appeal, but is a method by which an aggrieved party to an arbitration can have an arbitrator refer a question to the High Court for determination. The section states that the arbitrator may, and shall if so directed by the court, state in the form of a special case for determination by the court any question of law arising during the course of a reference or an award or any part of an award. An appeal lies to the Court of Appeal from any decision of the Court under this section, but leave is required where the appeal lies against the decision on a case stated on any question of law arising during the course of the reference. Part 61 CPR deals with the way in which the High Court determines a case stated or question of law referred to it by a minister, magistrate, judge of a tribunal, a tribunal or other person.[12] An application to the court for an order directing a tribunal or arbitrator to state a case for determination by the court is made by a fixed date claim form which must contain certain particulars.[13] In this case, no person has applied to the Arbitrator to state a case to the High Court under section 31, nor has any person applied to the High Court pursuant to section 31 for an order to the Arbitrator to state a case for determination by the Court. The section has no application to the issues in this application.

[13] The leading authority on the interpretation of sections 18 and 19 of the Arbitration Act of Grenada is the decision of Baptiste J.A. in the One Call Construction Company Limited v Grenada Solid Waste Management Authority.[14] In that case the issue was whether an application to the High Court for an order to remit the award of an arbitration tribunal for reconsideration was an appeal. The matter stemmed from a dispute between the appellant and the respondent which had been submitted to arbitration pursuant to the terms of a contract between them. Upon the arbitrators giving their decision the appellants had commenced

[12] CPR 61.1(1).
[13] CPR 61.2(1).
[14] Grenada HCVAP 2009/014 (delivered 8th September 2010, unreported).

proceedings by way of fixed date claim form seeking an order remitting the award to the arbitrators for reconsideration or alternatively setting it aside on the ground that the evidence was not fully recorded and the award was bad on its face. Baptiste J.A. had no doubt that sections 18 and 19 of the Arbitration Act empowered the appellant in that case to apply by way of a fixed date claim form for the relief that they sought. He explained:

> "[10] The Court has a statutory jurisdiction under section 19(2) of the Arbitration Act to set aside an award where the arbitrator has misconducted himself or the proceedings and where the award has been improperly procured. Section 19(2) states:
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> > "Where an arbitrator or an umpire has misconducted himself or the proceedings, and where an arbitration or award has been improperly procured, the Court may set aside the award."
>
> "[11] The Court also has a statutory jurisdiction under section 18 of the Arbitration Act to remit for reconsideration by the arbitrator any or every matter contained in the reference. Thus section 18(1) states:
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> > "In all cases where there has been a reference to arbitration the Court may, by order, remit for reconsideration by the arbitrator or umpire any or every matter contained in the reference." "

Baptiste J.A. was not asked to address the issue of the limited meaning of "reference" raised by the appellant in this case. The matter is therefore new for consideration. It is an issue eminently suitable for resolution in the High Court, and if thought necessary, subsequently by appeal to the Court of Appeal. It is not one that I can properly address in this interlocutory proceeding.

[14] Counsel for Ms. De Bellotte submits that the main issue is the question whether the Government's fixed date claim form was capable of being construed as an application to remit or set aside an award filed pursuant to sections 18 and 19 of the Arbitration Act. A close perusal of the paragraphs of the decision quoted above reveals that the learned trial judge mistakenly refers to the "Applicants" and an "application" in paragraphs 15 and 16 of her decision when it is clear that she really intends to refer to Government and their fixed date claim form, i.e., the claimants and their claim. Indeed, she finds at paragraph 19 that the application of

Government to refer the award back to the Arbitrator is required by the rules to be made by a fixed date claim form. The applicants in those paragraphs should therefore have been correctly referred to as claimants.

[15] However, at paragraph 21 she next states that she will treat the fixed date claim form as an application. Quite why she thought this was required is not clear. She sets the "matter", which must refer to the fixed date claim form, down for hearing on a date to be fixed by the Court Administrator. The terminology appears to have got a bit confused. However, it seems to me that what she is intending to do is, in exercise of her case management powers under CPR 27.2, to set the claim down for hearing and to dismiss the application of Ms. De Bellotte to strike out the fixed date claim form. No doubt, she will give directions in due course for a defence and submissions to be filed and served and any other necessary case management directions.

[16] In conclusion, I find that the learned trial judge was correct to have decided as she did at paragraph 16 of her ruling that the application of Government fell squarely within the requirements of sections 18 and 19 of the Arbitration Act. Her decision to set down the fixed date claim form for hearing on a date to be fixed by the Court Administrator was a proper exercise of her function as a case manager. I would dismiss the appeal and confirm the order of the learned trial judge with costs to the respondent to be assessed if not agreed.

[17] In the event that there is no agreement by the parties as to the costs of this application, I will hear submissions on costs to be filed and served and faxed to the Court of Appeal on or before 13th January 2012.

Don Mitchell
Justice of Appeal [Ag.]