

**EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

ANTIGUA AND BARBUDA

HCVAP 2012/026

BETWEEN:

**STANFORD INTERNATIONAL BANK LIMITED (IN LIQUIDATION)
(acting by and through its Joint Liquidators, Marcus A. Wide and
Hugh Dickson)**

Appellant

and

**[1] ROBERT ALLEN STANFORD
[2] ANDREA STOELKER
[3] STANFORD DEVELOPMENT COMPANY LIMITED
[4] MAIDEN ISLAND HOLDINGS LIMITED
[5] GILBERTS RESORT DEVELOPMENT HOLDINGS LIMITED
[6] STANFORD HOTEL PROPERTIES LIMITED**

Respondents

Before:

The Hon. Mr. Don Mitchell

Justice of Appeal [Ag.]

On Written Submissions:

Ms. Nicolette M. Doherty

2012: November 30.

Civil Procedure – Interlocutory appeal – Trial judge ruled on application under mistaken belief that one of the parties to the hearing had filed neither affidavits in opposition nor written submissions – In fact affidavits in opposition and written submissions had been filed but misplaced by the court office – Delay in delivery of ruling – Whether hearing of application fair in such circumstances

On 15th August 2012, the trial judge set aside a previous order of the Court granting the appellant Liquidators leave to serve court proceedings on one of the respondents out of the jurisdiction. The trial judge was only able to come to a determination on the matter some six months after it was heard, due to a delay in him receiving the court file from the

Registry. When the judge made his ruling, there were no affidavits or written submissions in opposition to the respondent's application (to set aside the previous order) before him. They had in fact been filed seven days prior to the hearing, but due to an error on the part of the Court office, they had not been placed on the court file.

Held: allowing the appeal, remitting the matter to the High Court for a rehearing and making no order as to costs, that:

1. The Court office's failure to place on the court file the appellant's written submissions and affidavits which had in fact been timeously filed, could not have resulted in a proper determination of the matter. Additionally, the unfairness of the procedure was compounded by the fact that the file was only made available to the judge long after the matter was heard.

JUDGMENT

- [1] **MITCHELL JA [AG]:** This interlocutory appeal raises the spectre of a Court Registry that must have been in utter disarray in January 2012.
- [2] Justice Remy had in July 2011 given leave to the appellant Liquidators to serve court proceedings on one of the respondents out of the jurisdiction. The respondent filed an application in October 2011 to set aside that order. A number of affidavits and written submissions for and against the application were filed.
- [3] The matter came up for hearing in Chambers before Michel J on 27th January 2012. Appearing for the Liquidators were Mr. Craig Christopher of local counsel and Mr. Malcolm Arthurs and Mr. Dan Wise of the BVI Bar. Appearing for the first respondent were Mr. David Joseph, QC of the UK Bar and Mr. Hugh Marshall Jr. of the local bar. The judge heard the application to set aside the order granting leave to serve out of the jurisdiction. He was unaware during the hearing that the Liquidators had filed one or more affidavits and written submissions in opposition to the application, because they did not appear on the file and no one told him of their existence.

[4] Some six months later, on 15th August 2012, the judge delivered his ruling setting aside the order granting leave for service out of the jurisdiction and declaring the service to be of no force or effect. He stated at paragraph 10 of his ruling that no skeleton arguments, written submissions or affidavit evidence were filed on behalf of the Liquidators in opposition to the application. The judge was in fact mistaken in this respect. As the notice of interlocutory appeal subsequently filed makes clear, the Liquidators had on 20th January 2012, seven days prior to the hearing, filed affidavits and written submissions opposing the application. He did not have the benefit of these written affidavits and submissions when he came to make his ruling. It was essential for a proper determination of the matter for them to have been placed by the Registry staff on the court file for his assistance in preparing his ruling.

[5] The judge explains at paragraph 14 of his ruling why it was that such a long period as six months had to pass between the hearing and the delivery of his ruling on the application. It was this: that the case file had only recently become available to allow for the preparation of his ruling. This must mean that the court file had been misplaced by the court office staff for some six months after the hearing and that he had to await their location of it to assist him in preparing his ruling. And, it will be evident from his ruling that the case file had still not by this time, six months later, been completed by placing on it the Liquidators' submissions and the missing affidavits. We know this because the judge wrote at paragraph 10 that there were no such filings. He would not have made that erroneous comment if the affidavits and submissions had, even at this late point, been placed on the court file for his attention.

[6] The failure to place written submissions and affidavits of one of the parties on the court file, prior to the judge hearing the application, could not result in a proper determination of the matter. The subsequent misplacing of the file, so that it was only produced to the judge some six months after the court hearing, compounded the unfairness of the procedure. And, the fact that the court file, when eventually

produced to the judge six months later, still lacked the missing submissions and affidavits of one of the parties is barely credible.

[7] In such circumstances, I cannot find that any ruling could have been fair to the parties. I would set aside the Order made on 15th August 2012 and remit the various applications to the High Court for a rehearing. It would hardly be necessary for me to add that I trust that the case file will now be completed with all the necessary and appropriate filings on it.

[8] I have seen on the file that was given to me the notice of appeal filed with leave on 24th September 2012 and the written submissions of Ms. Doherty in support filed on the same date. There is also on the file an affidavit of service of the appeal documents on opposing counsel on 24th September 2012. I found no notice of opposition or submissions in reply on the file. I have taken the precaution of double-checking, and I have ascertained that there were none filed prior to my making this Order.

[9] The Order will be that:

- (1) the 15th August 2012 Order of Michel J setting aside service on Robert Allen Stanford, is set aside;
- (2) the 28th July 2011 Order of Remy J granting permission to serve Robert Allen Stanford outside the jurisdiction is restored;
- (3) the matter is remitted to the High Court for rehearing;
- (4) the respondent not having been at fault, there will be no order as to costs.



Don Mitchell
Justice of Appeal [Ag.]