THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2007/0048

BETWEEN:

MICHAEL LUIK

MARK LUIK

AND

TIMOTHY LUIK

INTENDED APPELLANTS/CLAIMANTS

AND

SHEILA GEORGE

INTENDED RESPONDENT/DEFENDANT

Appearances:

Mr. Roderick Jones for the intended appellants/claimants

Mr. Duane Daniel with him Ms. Jenell Gibson for the intended respondent/defendant

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2019: Jul. 10

Jul. 17

DECISION

BACKGROUND

[1] **Henry, J.:** Michael Luik, Mark Luik and Timothy Luik filed a claim in the High Court against Sheila George in 2017. They sought an order that Ms. George deliver up vacant possession of certain property at Belvedere which they inherited from their grandfather. Ms. George disputed that they were the lawful owners of the subject property and alleged that she had acquired an interest in it by adverse possession. Her defence was rejected by the trial judge.

[2] Following a trial, judgment was entered for the Luiks on July 23rd 2012. It was determined that Ms. George had acquired no interest in the property and her counterclaim was dismissed. She was ordered to vacate the property on or before September 1, 2012. She did not do so.

[3] On April 10th 2018, the Luiks filed a 'Request for Issue of Writ of Possession'. It was not granted. By letter dated April 16 2018, the learned Registrar wrote to the Luiks' legal practitioner indicating that it could not be granted in the absence of proof of service of the judgment on Ms. George. By affidavit of service filed on 14th June 2018, Mr. Robert Hillocks deposed that he had served a copy of the July 23rd 2012 judgment personally on Mr. Allie George who identified himself as Ms. George's son. An amended Affidavit of Service was filed on 3rd August 2018.

[4] The Luiks re-filed the 'Request for Issue of Writ of Possession' on 4th September 2018. They averred that they did so after being informed that the writ that was initially filed could not be located. A Writ of Possession was issued to the Marshall that day. On 28th March 2019, Ms. George filed a Notice of Application for an interim injunction and stay of the writ of possession. By order dated 16th April 2019 the Writ of Possession was stayed by reason that 'it was issued contrary to CPR 46.2(c) …'.

[5] The Luiks have applied for leave to appeal that order. Ms. George has resisted the application. The application for leave to appeal is granted for the reasons outlined in this decision.

ISSUE

[6] The issue is whether Michael, Mark and Timothy Luik should be granted leave to appeal the impugned decision?

ANALYSIS

Issue - Should Michael, Mark and Timothy Luik be granted leave to appeal the impugned decision?

[7] A party desirous of appealing an interlocutory order must first obtain the court's leave.[1] The Application for leave must be filed no later than 14 days after the order. The Luiks filed their application on May 3rd 2019. That is respectively, 17 and 3 calendar days after the impugned

[1] Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act, section 32 (2) (g); Cap. 24 of the Laws of Saint Vincent and the Grenadines 2009.

decision and after the deadline for filing. The Luiks submitted that their application was timely. They argued that two public holidays fell between the date of the impugned order and the date when they filed the instant application. They submitted that those two days must be discounted pursuant to CPR 3.2 (4) in accordance with practice. They proferred no legal authority that such practice obtains. I am unaware of any.

[8] Ms. George countered that CPR 3.2 (2) through (4) sets out the practice for the computation of time. In this regard, the CPR provides that where a period exceeds 7 days, it is computed by counting as 'clear days' all the days including weekends, but excluding the first and last days of the period. This submission reflects the correct legal position and practice. Ms. George submitted that the date for filing the application for leave to appeal was therefore, May 1, 2019. I agree.

[9] A single judge of the Court of Appeal has signaled that a failure to comply with the timeline for making an application for leave to appeal attracts a sanction - the loss of the right to the grant of such leave[2], unless relief from sanctions is received and an extension of time is granted to do so. The Luiks have made no application for extension of time to appeal and have provided no explanation regarding the delay. I find therefore that the Luiks' application for leave to appeal is out of time. In the circumstances, they have failed to satisfy one of the requirements for their application.

[10] The case of **Quillen v Harvey Westward & Reigels No. 1**[3] is instructive on how the court should treat with an application for extension of time to appeal which does not incorporate a parallel and imperative application for leave to appeal. It is important to note that the operative Rules of Procedure under consideration at that time were the Rules of the Supreme Court 1970 which have been replaced by the CPR. This case is also distinguishable because in this case no application has been made for extension of time and the Court was considering an application for extension of time.

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[2] J. R. O'Neal and G. A. Cobham Limited v Cliff Williams BVIHCVAP2006/0010, per Barrow JA at para. [10]; and

[3] (2001) 58 WIR 143.

[11] In that case, the Court of Appeal acceded to the intended appellants' oral application for leave to appeal. It opined that justice would be best served by doing so. The Court considered that the issues relevant to the determination of both applications were the same. The intended appellants had filed an affidavit explaining the 6 month delay in applying. However, the Court felt that the delay was inordinate and the explanation for it was not substantial.

[12] Notwithstanding, the Court determined that the intended appellants' had demonstrated that they had some chance of success on appeal and had laid out an arguable ground of appeal. They found that there was no prejudice to the respondents if leave was granted. The Court reasoned that its main concern was to ensure justice. They concluded that if there appeared to be some merit in the proposed appeal the application for leave should be granted even in the absence of substantial reasons for the delay. That decision was cited with approval by Rawlins J.A. in the case of **Victoria Arthein (nee Laville) v The Dominica Agricultural Development Company Ltd.**[4] which was decided after the introduction of the CPR.

[13] While the Luiks have provided no direct evidence about the reason for the delay in applying for leave, the Court takes into account that the delay was not extensive. Inferentially, the Luiks are not in a dissimilar position to the intended appellants in the **Quillen case**, in that they have provided no good reason for the delay. In deciding whether their failure to meet the deadline is fatal to their application for leave, I think it is prudent in the interest of justice, to consider the prospects of their appeal remaining mindful that there is no application before the court for an extension of time. I will return to that after assessing the merits of the proposed appeal.

[14] An application for leave to appeal must set out the grounds of the proposed appeal.[5] The Luiks' application identified 5 grounds of appeal. In this regard, it is compliant with the CPR.

[15] The Court will grant leave to an applicant to appeal if it seems that the proposed appeal has a realistic prospect of success; or for some other compelling reason. Such profound reason may be

[4] Civil Appeal No. 11 of 2005, unreported.

[5] Civil Procedure Rules 2000 ('CPR'), rule 62.2(1) and (2).

demonstrated by a well-articulated and reasoned need to obtain clarification from the appellate court in complex or novel areas of law; or where the case involves matters of such importance that the public interest would be best served if they are considered by the Court of Appeal.[6] Ms. George submitted that the cases of **Sylvester v Faelleseje**[7], **First Caribbean International Bank (Cayman) Ltd v Starkey**[8] and **Hadmor Productions Ltd v Hamilton**[9] echoed those principles. They do. The foregoing legal principles will be applied in the instant case. The five proposed grounds of appeal will be examined in light of those principles.

[16] It is useful to set out the stated rationale[10] underpinning the order against which the Luiks seek leave to appeal. The relevant portion of the Order states:

> '...Whereas on a review of the Writ of Possession, it was noted that the Writ of Possession was issued contrary to CPR 46.2 (c), judgment being entered on 23rd July, 2012 and the Writ of Possession being issued on 4th September, 2018.
>
> **IT IS HEREBY ORDERED THAT**:
>
> 1. The Writ of possession issued on 4th September 2018 is stayed.'

[17] Part 46 of the CPR sets out the procedure which guides the Court in considering an application to issue a writ of possession. CPR 46.2 (c) provides:

> 'A writ of execution may not be issued without permission if –
>
> (a) ...
>
> (b) ...
>
> (c) 6 years have elapsed since the judgment was entered.'

It follows that the writ of execution was stayed because the request for its issuance was filed on September 4th 2018, more than 6 years after the July 23rd, 2012 judgment.

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[6] AG of Grenada et al v. Andy Redhead, Civil App. No. 10 of 2007 at para. [15] per Edwards J.A. (Ag.)

[7] SVGHCVAP2005/0005 delivered 20th February 2006.

[8] BVIHCVAP2005/0023.

[9] [1983] 1 AC 191, 220, HL.

[10] As articulated in the referenced order.

[18] The record reveals that by letter dated 29th May 2019, the Luiks' legal practitioner wrote to the learned Registrar requesting the reasons for the decision. The learned Registrar responded by letter dated 14th June 2019 in which she stated:

> 'The reason for my decision is that the Writ of Possession was issued contrary to CPR 46.2 (c)'.

[19] In their written submissions, the Luiks contended that the Registrar in her oral reasons, indicated that the language of the CPR is clear and that the burden rests on the issuing institution. They argued that the learned Registrar ruled that the relevant time for consideration was the date of issuing the writ, as opposed to the date on which the request was filed. No transcript of the hearing was included with the application or in other representations and no affidavit testimony has been presented to chronicle what happened during the hearing.

[20] I have inquired of counsel for the respective parties, whether the hearing was recorded. They advised that it was not. The Luiks' submissions about what transpired at the hearing have not been authenticated and have not been confirmed by Ms. George. In fact, the parties have different recollections about what happened at the hearing and opposing accounts of the substance of the oral submissions made by learned counsel for the Luiks.

[21] Both sides acknowledged that the Registrar bolstered her decisions to stay the writ of execution with additional reasons which are not set out in the impugned order. In the circumstances, I accept that the reason provided by the Registrar in her order and in the referenced letter underpinned her decision to stay the writ of possession. I also find that she supplemented them orally. It is self-evident that I will be unable to address those additional reasons in determining this application. In the premises, this decision would not be as comprehensive as it would have been if those reasons were available. I turn now to consider the grounds of appeal.

Proposed grounds of appeal

<u>Grounds 1 and 2 – Alleged mis-direction on procedure where defence counsel present for delivery of judgment</u>

[22] The Luiks submitted 'the learned Registrar misdirected herself on the correct civil practice and procedure when she insisted that she could not grant the Request for a Writ of Possession filed on 10th April 2019 unless there was evidence that the defendant had been served a copy of the

judgment. They contended that she misdirected herself despite the fact that the defendant's counsel was present when the judgment was delivered on the 23rd day of July 2012. They argued that because of the misdirection the learned Registrar failed to take cognizance that the defendant would have had constructive notice of the judgment pursuant to CPR 42.2 (b). They argued also that the Registrar abdicated her responsibility to serve a copy of the judgment on the defendant or the defendant's legal representative pursuant to CPR 42.6.

[23] Ms. George countered that an appeal must emanate from a specific decision which an appellant is seeking to prove was incorrect on established bases. She argued that the appellate court has a limited function to review any such decision. She submitted that in determining whether the discretion which was exercised was just and ought to stand in all the circumstances, the court must assess the considerations which were at the forefront of the judicial officer's mind.

[24] Ms. George argued that the specific decision which the Luiks are seeking to appeal is the Registrar's decision delivered on 16th day of April 2019 to stay the execution of the writ of possession issued on September 4, 2018. She submitted that grounds 1 and 2 of the proposed appeal relate to the Registrar's decision which was delivered in her letter dated April 16, 2018, over one year prior to the instant application.[11]

[25] Ms. George contended that the Luiks are not only grossly out of time as it relates to a potential appeal of that decision, but that they have also acceded to and complied with the Registrar's request for proof of service of the judgment. She pointed out they did so by filing Robert Hillocks' Affidavit of Service and Amended Affidavit of Service[12]. Ms. George reasoned that the April 2018 decision 'falls outside of the scope and ambit of the instant application' because the latter is limited to the Registrar's decision of April 16, 2019. She concluded that this proposed ground of appeal therefore has no chance of success. She submitted that the instant issue is more properly suited for separate proceedings in a more appropriate forum.

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[11] This refers to the decision whereby the Registrar notified the Luiks that the Writ cannot be granted in the absence of proof of service of the judgment.

[12] Respectively on June 14, 2018 and August 3, 2018.

[26] The first and second proposed grounds of appeal raise a number of sub-issues:

a) whether the learned Registrar's reason for the impugned decision was based on lack of evidence that Ms. George had been served a copy of the judgment;

b) whether the learned Registrar arrived at her decision and misdirected herself by not finding that the presence of Ms. George's counsel when the judgment was delivered on the 23rd day of July 2012:

(i) was constructive notice to Ms. George of the contents of the judgment pursuant to CPR 42.2 (b); and,

(ii) satisfied the requirement (under CPR 42.6) for service of the judgment on her before a Writ of Possession could be issued; and

c) whether the Luiks' assertions that learned Registrar abdicated her responsibility to serve a copy of the judgment on the defendant or the defendant's legal representative pursuant to CPR 42.6 featured in her considerations in arriving at her decision; and

d) whether any of the foregoing contentions advances an argument which affords the Luiks' a real prospect of success on appeal.

[27] The language of the impugned order suggests that the sole reason on which it is founded is that the Writ of Possession was issued after the 6 year deadline for such issuance. The order mentioned the date of the relevant judgment (23rd July 2012) and the date the Writ was issued (4th September 2018). It makes no reference to the lack of service of the judgment on Ms. George. I therefore have no basis to make a finding that the learned Registrar's decision was in part or wholly grounded on lack of such service. This part of the Luiks' submissions is not likely to meet with success on appeal unless the additional reasons mentioned by the parties create an opportunity for such arguments to be made on appeal.

[28] The Luiks contended[13] that those were matters they raised at the hearing. Ms. George submitted[8] that they were alluded to as part of the factual background but not as legal submissions. The order makes no reference to such submissions. They do not feature as part of the written reason for the impugned decision. The impugned decision does not refer to the absence of service of the

[13] In oral submissions.

judgment on Ms. George. It does not advance any such reasons as a basis for the conclusion and ruling contained in it. Accordingly, the Luiks' submissions regarding the referenced mis-directions by the learned Registrar highlight and introduce reasons which were not part of the written decision.

[29] In the premises, the decision is not open to challenge on those bases, unless the Luiks are able to establish that that the 'oral reasons' for the decision included such matters. Therefore, such arguments are not likely to assist the Luiks in securing success at the appellate level, except in such circumstances. The parties were equally at odds as to whether the Luiks raised the issues of constructive notice, abdication of responsibility by the Registrar and implied service of the judgment on Ms. George, during the hearing leading to the impugned decision.

[30] There is no official record from which this court can determine whether those issues were raised and determined at that hearing. I therefore make no finding one way or another. Suffice it to say that if they were not, the Luiks' are not likely to find favour on appeal. If they were, the Luiks probably have a realistic prospect of success on appeal, because the Registrar would reasonably have been expected to take them into account in light of the circumstances of this case. In this regard, the Registrar would reasonably have been expected to assess in particular whether lack of service arose through any default by the court office. If she concluded that it did, then this would have been a relevant consideration to factor into her decision.

Ground 3 – Registrar erred in staying Writ of Possession issued on the 4th September 2018

[31] The Luiks' 3rd proposed ground of appeal is that contrary to the overriding objective to deal with matters justly, the learned Registrar erred in staying the Writ of Possession without giving due consideration to her discretion to extend the time to comply with a court order or rule. They added that she was empowered to do so pursuant to rule 26.1(2)(k) of the CPR.

[32] The Luiks submitted that having regard to the date, when the request for the writ of possession was filed, it was a timely request having been made within the 6 year window. They argued that the Registrar should therefore have exercised her discretion to extend the period to grant the writ of

possession, and declare that the writ granted on 4th September 2018 was issued in time. They submitted that the learned Registrar's request for confirmation from them that the Ms. George was served with a copy of the judgment was irregular, and even if it was not, the Registrar in keeping with the overriding objective to deal with matter justly, should have extended the time in light of the fact that the initial request was filed in time.

[33] The Luiks argued that the learned Registrar's decision to stay the execution of the writ in the circumstances offends against the overriding objective to deal with matters justly, especially since they had judgment in the matter and Ms. George was in contempt of a court order to vacate the property. They reasoned that the learned Registrar's decision to grant a temporary stay runs contrary to the guiding principle enunciated by the Court of Appeal in **Marie Makhoul v Cecily Foster**[14].

[34] The Luiks submitted that the general rule is not to grant a stay since it denies the successful applicants the fruits their judgment. They contended that had the learned Registrar properly addressed her mind to all of the facts in the matter, it is unlikely that she would have decided to grant the stay of execution. They reasoned that given the dire impact of the stay on them (they having received an un-appealed judgment in the matter, having been denied the fruits of their judgment, and having filed a request for a writ of execution on time).

[35] Ms. George countered that up to the delivery of the impugned decision on April 16, 2019, no application was made to the Registrar for an extension of time to issue the writ of possession. She submitted that the Registrar has no discretion or authority whatsoever to extend the six year period prescribed by the rules for enforcement of a judgment. She argued that any purported extension of time is governed by CPR rules 46.2(c) and 46.3. Ms. George submitted that CPR rule 46.3 sets out the procedure for obtaining leave, requires that an affidavit be filed in support of the application and stipulates that the applicant satisfy the court as to the reasons for the delay.

[36] Ms. George argued further that the exercise of judicial discretion for an extension of time to enforce a judgment necessitates the consideration of affidavit evidence. She argued that none was placed

[14] ANUHCVAP2009/0014.

before the court and consequently the purported exercise of such discretion pursuant to CPR 26.1(2) (k) would have been blatantly incorrect and in excess of the jurisdiction conferred on the Registrar. She concluded that this ground of appeal is without merit and unlikely to succeed.

[37] The Luiks appear to have implicitly invoked rule 26.9 of the CPR which empowers a judicial officer to make an order of her own volition to put things right if a party commits a procedural *faux pas* by failing to comply with a court order or direction, rule or practice direction. They did not refer to that rule but submitted that it was open to the learned Registrar to extend time of her own volition. Rule 26.9 may be utilized by a judicial officer in such a manner, if no sanction is specified for non-compliance with a rule, practice direction, court order or direction.

[38] Ms. George correctly identified CPR rule 46.2 (c) and 46.3 as the provisions which outline the procedure for seeking an extension of time to issue a writ of execution (including a writ of possession). Rule 46.2 provides that a writ may not be issued after the deadline has passed, unless the court grants permission. Therefore, the Luiks would have needed permission from the court to issue the writ of possession after that six year period elapsed.

[39] A judgment creditor seeking an extension to issue such a writ must pursuant to rule 46.3, satisfy the court that he is entitled to enforce the judgment and that the judgment debtor is liable to satisfy the judgment. He must also satisfactorily explain the reasons for the delay. Rule 46.3 contains no sanction for failure to meet those requirements. No other rule prescribes a sanction. Rules 46.2 and 46.3 do not prohibit the court from granting an extension of time of its own volition and do not impose a mandatory obligation on a judgment creditor to apply for such leave.

[40] In all the circumstances, it does not appear that there was anything precluding the learned Registrar from extending the time for issuance of the writ of possession in light of the factual background in the instance case. It is not clear if this was argued before her. It seems to me that based on the peculiar facts of this case and the alleged administrative issues, purportedly attributable to alleged mis-steps by the court office[15], that it was open to the learned Registrar to extend time of her own

[15] Including allegedly mis-placing the earlier filed writ of possession.

volition pursuant to the CPR as argued by the Luiks. Their contention that the learned Registrar erred in this regard provides a realistic chance for them to succeed at the appellate level.

Ground 4 – Registrar abdicated her responsibility

[41] The Luiks' proposed 4th ground of appeal is that the learned Registrar abdicated her responsibility to grant the Writ of Possession which was requested and filed within time on 10th April 2018. They added that the issuance of the writ outside the six year time frame worked to their prejudice and caused them injustice because they had obtained judgment and had been denied the enjoyment of their property.

[42] The Luiks contended that the issuance of the writ was delayed because the Registrar insisted that she needed evidence that Ms. George was served with a copy of the judgment before the writ can be granted. They submitted that the learned Registrar's request for evidence of such service was irregular and should not have been made in the first instance. They argued that CPR rule 42.2 makes clear that all parties in a matter are bound by a judgment once they or their legal representative is present when the judgment is read, irrespective of whether they are served with a copy of the judgment.

[43] The Luiks submitted that an endorsement on the court file reveals that when the judgment was given, Ms. George's lawyer was represented in court and it was therefore his responsibility to ensure that his client was notified of the judgment. They submitted further that rule 42.6 of the CPR mandates the court office to serve each party with a copy of the judgment. This is so. The Luiks reasoned that even if Ms. George's lawyer did not inform her of the judgment, the court office was duty bound to serve a copy of the judgment on her. They contended that they had no duty or responsibility to serve Ms. George with the judgment.

[44] The Luiks argued that the learned Registrar acted irregularly when she delayed the grant of the writ of possession by asking them to provide evidence that the judgment was served on Ms. George, when this was the responsibility of the court office and to a lesser extent defence counsel's. They submitted that the writ of possession would have been granted in time, but for the administrative irregularity which occasioned the delay.

[45] They contended that an examination of the facts in this case will constrain the Court to conclude that the learned Registrar operated 'outside the confines of the CPR when she delayed the request for the writ of possession', by asking them for evidence of service of the judgment They stressed that this was a responsibility that 'falls within … the duties of the court office.' The Luiks contended that had the learned Registrar not misdirected herself as to the proper procedure, the writ of possession would have been granted in time. They reasoned that any attempt to deny them the fruits of their judgment 'as a consequence of an administrative irregularity by the Registrar offends the overriding objective of dealing with matters justly.' They submitted that in the premises, 'the court is constrained to grant leave to appeal to correct this irregularity.

[46] Ms. George re-joined that this proposed ground of appeal falls outside the ambit of the Registrar's decision. She submitted that the question as to whether the learned Registrar acted promptly in issuing the writ of possession is not suited for an appeal against her decision to stay the writ of possession. She argued that the learned Registrar's decision turned on the interpretation of rule 46.2 (c) of the CPR. Ms. George contended that the learned Registrar ruled that this provision puts the onus on the issuing institution and thus restrained the court from *issuing* a writ of execution more than six years after the date of the judgment.

[47] Ms. George submitted further that whether or not the learned Registrar 'abdicated her responsibility' by allegedly failing to act in a more timely manner, is a separate issue from whether the court office could validly issue the writ of possession after the timeframe for such issuance had expired, without extension of time. She submitted that this proposed ground of appeal, also discloses no likelihood of success.

[48] I make no finding that the Registrar deliberately delayed the issuance of the writ of possession as implied by the Luiks. However, the history of this matter speaks for itself. It seems to me that if the delayed issuance of the writ of possession was attributable partly or wholly to default by the Registrar or the Registry staff with respect to failure to serve the judgment, that this should factor into the exercise of the Registrar's discretion in connection with the staying the issuance of the writ. To conclude otherwise could lead to situations where litigants have no recourse to a just resolution of their concerns in instances where:

1. protracted and un-remedied inaction by the court office in serving of orders; coupled with

2. loss of filed documents;

necessitates remedial action by such litigant to complete administrative functions with which the court office is charged and re-filing of documents to replace those lost. This would be inimical to the due administration of justice and contrary to the rule of law. I find that this ground of appeal has a realistic chance of success.

Ground 5 – Prospect of success

[49] The Luiks' fifth ground of appeal is that it has a realistic prospect of success. They submitted that the proposed appeal has more than a realistic prospect of success by virtue of the myriad of irregularities surrounding the granting of the stay by the learned Registrar.

[50] Ms. George argued that the proposed grounds of appeal are largely unrelated to the learned Registrar's decision which was delivered on April 16, 2019 and, establish no basis on which an appellate court can allow an appeal against the decision. She submitted that the Luiks have established no properly formulated or legitimate grounds of appeal, and that there is simply no basis upon which they can establish that the intended appeal has any realistic prospect of success. She contended that the application for leave to appeal ought to be dismissed, with costs to her.

[51] This proposed ground of appeal advances no independent legal or factual basis on which the Court of Appeal can be invited to make a finding that the Registrar's decision was fatally flawed or arrived at in error. In my opinion, there is little chance that this proposed ground can succeed.

[52] In the round, I am satisfied that the Luiks have demonstrated that one or more grounds of their proposed appeal have realistic prospects of success on appeal. This brings me to the issue of whether the Court should grant the Luiks an extension of time to appeal by treating the instant application as partly an application for extension of time to appeal. The Court of Appeal in the Quillen case adopted a somewhat similar approach on different facts. They justified this approach by the dictates of justice.

[53] Mindful that the CPR has established a strict regime for obtaining leave to appeal which must be rigorously adhered to, I have considered what options are open to the Luiks should their application be dismissed for their failure to file it within time compounded by their obvious error in not making a formal application for extension of time to apply for leave to appeal. If they have the means, they

may apply to the Court of Appeal for extension of time to apply for leave to appeal and then file an application for leave to appeal. The time, financial and other resources which must be expended in such an endeavor is not insignificant. They would more than likely succeed at that level.

[54] If the Luiks do not have the means to prosecute the case to the next level, they would have lost a good opportunity to make sounds arguments on appeal and would thereby be prejudiced. Ms. George would ultimately be the outright victor in circumstances where she was defeated at trial and would have escaped being held accountable for allegedly not complying with court order. Both parties would have an equal opportunity to argue their respective cases on appeal if extension of time is granted to the Luiks to appeal. Ms. George would not be unduly prejudiced by such action.

[55] I am mindful that the parties have not addressed the court fulsomely on such approach. Ms. George has stressed that no such application is before the court. In answer to a question from the court her legal practitioner replied that she is unaware of any decided cases in which the court has granted leave to appeal a decision where the application was filed after the deadline. The Quillen case provides an example.

[56] I consider that the delay in this case has been very limited – 3 days. I also take note that based on the agreed history, the Luiks' experience in seeking to have the writ of possession issued was seemingly hampered by the court's loss of the first writ of possession and their decision to attempt to serve the judgment on Ms. George. Those are not normal occurrences. In the particular circumstances of this case, it seems to me that the court cannot ignore those assertions and look the other way. The justice of the case requires something more. As in the **Quillen case**, no substantial reasons have been given for the delay. Unlike that case, the delay in the case at bar is short.

[57] Moreover, the parties have accepted that the reasons for the impugned decision were partly oral and partly written. There is no agreement on the content of the oral part. This provides another reason why the Luiks' should have an opportunity to present their appeal for consideration by the appellate court. For the foregoing reasons and guided by the example of the Court of Appeal in the Quillen case, I propose to treat the present application as an application for leave to appeal coupled with an application for extension of time to do so. It is ordered that Michael Luik, Mark Luik

and Timothy Luik are granted an extension of time of 7 days from May 1st 2019 to apply for leave to appeal the Registrar's decision. Their application for leave to appeal is accordingly granted.

Costs

[58] Having prevailed, the Luiks are entitled to recover their costs of this application. Sheila George is ordered to pay them costs to be assed if not agreed.

ORDER

[59] It is accordingly ordered:

1. Michael Luik's, Mark Luik's and Timothy Luik's application for a leave to appeal the impugned order is granted.

2. Sheila George shall pay costs to Michael Luik, Mark Luik and Timothy Luik to be assessed[16] on application to be filed and served on or before July 29th 2019, if not agreed.

Postscript

[60] Regrettably, the court found itself in a position where there was uncertainty about all of the issues which were argued and decided and from which the impugned decision arose. Neither side provided affidavit testimony of such matters. This has left the parties in an unenviable position. The court apologizes to the parties for any inconvenience which they might have sustained for its role in the unusual events which unfolded in this case. The assistance rendered by the respective sides is appreciated.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar

[16] Pursuant to CPR 65.11 (2).